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PUBLIC ADMINISTRATION IN IRELAND

VOL. III

A series of lectures delivered under the auspices of the Civics Institute of Ireland to candidates for the Diploma of Public Administration of Dublin University

Edited by

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CONTENTS

PAGE

INTRODUCTION v

By Frederick C. King, M.A., Barrister-at-Law, Lecturer in Administrative and Industrial Law, Dublin University.

LEGISLATION—ITS PREPARATION AND ENACTMENT 1

By Gerald McCarthy, Parliamentary Draftsman.

THE CITIZEN *VERSUS* THE STATE 15

By P. P. O'Donoghue, S.C., Legal Assistant to the Attorney-General.

ADMINISTRATIVE TRIBUNALS 32

By Vincent Grogan, M.A., Barrister-at-Law, Assistant Parliamentary Draftsman.

ORGANISATION OF GOVERNMENT DEPARTMENTS 51

By W. Maguire, Barrister-at-Law, formerly Secretary Department of Social Welfare.

THE DEPARTMENT OF AGRICULTURE .. 61

By Seán Ó Broin, Secretary, Department of Agriculture.

THE DEPARTMENT OF EDUCATION 87

By M. Breathnach, M.A., formerly Secretary, Department of Education.

THE ADMINISTRATION OF EXCHANGE CONTROL IN IRELAND 109

By G. P. S. Hogan, Assistant Secretary, Department of Finance.

THE NEW SOCIAL WELFARE SCHEME .. 129

By J. J. O'Sullivan, B.A., H.Dip., Late Principal Officer, Department of Social Welfare.

THE FACTORY ACTS 148

By Miss B. Stafford, formerly Chief Inspector of Factories.

IRISH TRADE UNION LAW 161

By R. J. P. Mortished, formerly Chairman of the Labour Court.

THE CONTROL OF GOVERNMENT AND BUSINESS 184

By Denis A. Hegarty, General Manager, Dublin Port and Docks Board.

STRUCTURE OF THE IRISH AIR COMPANIES 195

By James Gorman, Secretary Aer Rianta and Aer Lingus.

THE HOSPITALS COMMISSION 205

By Eamonn de Barra, Accountant The Hospitals Commission.

LOCAL GOVERNMENT FROM THE COUNCILLOR'S POINT OF VIEW 217

By James C. I. Dooge, P.C., Chairman of Dublin County Council.

THE ADMINISTRATION OF MUNICIPAL HEALTH SERVICES 235

By J. P. Keane, Assistant City and County Manager (Dublin).

RATEABLE VALUATION 248

By R. H. White, B.E., B.Sc., Staff Officer in the General Valuation Office.

THE ADMINISTRATION OF CUSTOMS AND EXCISE 266

By A. J. Donnelly, Revenue Commissioner (Retired).

EXTRACTS FROM :

(*a*) THE APPLICATION OF STATISTICAL METHODS TO ADMINISTRATIVE PROBLEMS 285

By R. C. Geary, Director, Central Statistics Office.

(*b*) THE CHANGES EFFECTED IN RECENT LAND COMMISSION LEGISLATION 295

By Commissioner Kevin O'Shiel, S.C.

INTRODUCTION

The basis of all government other than purely arbitrary or despotic government is Law. It is an established principle in all democratic States that every act of the administration which interferes with the rights of an individual requires the authority of law to make it valid. Private rights themselves are based on law and custom. They are either rights recognised by custom and the common law or they are the creation of some Statute. Some rights are regarded as particularly sacred, not to be interfered with by changes of the ordinary law. They are specially guaranteed in the Constitution and can be altered or abolished only by the same means by which the Constitution itself is amended, that is to say, as a general rule, by the direct decision of the people, though, in a declared emergency, even the provisions of the Constitution yield place temporarily to the safeguarding of the public safety and the existence of the State. Short of such emergency conditions, so long as our State remains a democracy, so long as the character and Constitution of the nation is not changed, the only foundation on which public administration and every single act of the administration can rest is the foundation of Law. The Rule of Law requires, of course, that there must be independent courts with full power to interpret, apply and enforce the Law, against the Government if necessary. It means that even the administration is subject to the law and subject to the Courts. It does not necessarily mean that public officials and government agencies must be in all respects on an equal footing with private citizens when they come to court. It does not mean that public officials may not exercise special privileges and powers which are denied to the private citizen; it would not, for instance, exclude the special powers of arrest, detention and entry granted to police and other officers which are not enjoyed by ordinary citizens, nor does it mean that public officials may not be given special protection by the law which is denied to the ordinary citizen, for instance, the requirement that a prescribed period of notice must be

given before a suit can be instituted against a public servant for an act done in his official capacity. What it does mean is that the Executives, i.e. the Ministers and the host of public officials, cannot put themselves in a privileged position. Any privilege they enjoy must be conferred by law. Without the authority of law they can exercise neither power nor privilege not possessed by any other citizen. Without such authority they act at their peril if they attempt to coerce, or injure the rights of, any other citizen by any act of theirs whether such act is executed of their own motion or by direction of a superior. That is the general principle of law on which all public administration rests.

Meaning of Administrative Law

To make public administration possible and legal there must be special laws setting up departments and agencies of government, defining their functions and duties, conferring the necessary powers on them, defining the purposes and objects they are to pursue and prescribing the methods and procedure they are to follow and the manner in which disputes arising between the ordinary citizen and the administration are to be resolved. This body of Law is called Administrative Law. It is a very wide branch of law and is becoming wider every day as the powers and functions of government are extended. It embraces Constitutional Law on which the foundations of government are laid. It includes all the Statutes whereby departments and agencies of government are established and invested with power. It includes also all the rules and regulations made under the authority of Statutes. It also covers the rulings of the Courts on issues arising between the citizen and the State and deals, too, with the powers and procedures of tribunals, called Administrative Tribunals, to which certain adjudicatory functions in matters arising between the citizens and the administration have been committed. Lastly, it deals with the powers of adjudication and review vested in the Courts over every act of the administration. That is Administrative Law in its widest sense.

The term is also used in a narrower sense to denote that part of the subject which treats of the general principles governing the rights and obligations of the State and the Citizen *inter se* and the machinery for determining and enforcing such rights and obligations. In this narrower sense Administrative Law is an essential study for every intelligent citizen of a democratic State who is willing to shoulder civic responsibility for the character of the administration carried on in his name. It is partly in order that he should be enabled to fulfil this requisite of democracy that the material in this volume has been collected. He will find the lectures on The Citizen *versus* The State by Mr. Philip O'Donoghue, S.C., and on Administrative Tribunals by Mr. Vincent Grogan, B.L., particularly valuable in this line of study. Several of the other lectures provide valuable raw material for investigation of special branches of the administration, but these two lectures deal with underlying principles and theories applicable to the whole of our public administration. The editor feels impelled to pay a tribute to the public spirit of those who have contributed the lectures in this volume. As Chairman of the Educational Panel of the Civics Institute he also wishes to place on record the thanks of the Institute to the lecturers. The lectures have been arranged by the Civics Institute for students of Dublin University in connection with the University's Diploma in Public Administration. It is encouraging that so many of our prominent administrators have taken the trouble to expound frankly and informatively what goes on behind departmental doors. Democracy thrives on publicity. Secrecy is its deadly enemy.

Each of the lecturers has had first-hand experience in some most responsible position connected with the branch of administration on which he lectures. Their papers constitute a valuable store of facts and of opinions. Coming from such sources the opinions, as well as the facts, are valuable and entitled to respect. There is little an editor could add to them by way of editorial comment. They are, therefore, left to speak for themselves.

The Three Levels of Public Administration

The subjects treated in this series of lectures are varied and, in miniature, they present a sample view of the administration of the State. Our public service is operated at three distinct levels. First, at the centre, there is direct departmental administration carried on in departments by the civil service, which is permanent and non-political and which is subjected to the day-to-day supervision and control of the Oireachtas through the Ministers in charge of the departments, who are political leaders liable to be dismissed by Parliament, or by the people as a result of a general election. This is in accordance with democratic theory. At another level there is a great block of public administration carried on, not directly by the central government but by Boards of public corporations appointed generally by a Minister. The Boards and the staff of those public corporations are not directly responsible to the Oireachtas and in practice the day-to-day management of the corporations is entirely outside the immediate control of the Oireachtas. The third level of public administration is that of local government. Our system of local government is peculiar to ourselves. The administration is carried out in the name of the elected councils but, in fact, several subjects are excluded from the control of the councils and are administered by a Manager, who, within a very large sphere, is practically independent of his council and subordinate only to the Minister. The lectures in this volume deal with each of the three levels of administration. Those by Messrs. O'Donoghue, Grogan, O'Broin, Breathnach, O'Sullivan, Maguire, Hogan and Donnelly deal with central administration, those by Messrs. Gorman, de Barra and Hegarty (in part) deal with the public corporation method of administration, while those by Messrs. Keane and Dooge deal with local government administration. There is also a miscellaneous group of lectures delivered by Miss Stafford and Messrs. MacCarthy, White and Mortished which cannot be described as dealing with any particular level of administration. Finally, there

are extracts from lectures on the Land Commission and on Statistics by Commissioner O'Shiel and Mr. Geary. These subjects have received full treatment in the earlier volumes and, consequently, only extracts are given here.

Surveying the mass of material presented in this collection of lectures several question marks appear and it would be well that readers should apply their minds to those questions since one of the fruits of the study of Public Administration should be an improvement in the public service, and who are more qualified to lead a movement for reform than those who have made a study of the subject?

Irish System of Administrative Law and Justice

The first question which obtrudes itself after reading the lectures of Messrs. O'Donoghue and Grogan is whether our whole system of Administrative Law and Justice is not a bit of out-of-date, a relic of pre-planning and, indeed, of pre-democratic days. It was all very well in the days of *laissez-faire*, when the State stood outside the economic sphere and had not yet embarked on compulsory welfare or social security schemes, to accept the State as an impartial umpire who did not participate in the game but who enforced the rules. But, when the State itself became a participant, and sometimes even a competitor, with the private citizen, things became different. When the State takes part in the game there is need of another umpire. The theory of the impeccability of the State expressed in the old maxim "The King can do no wrong" then ceases to command any respect. It is proved too often in practice to be untrue. It becomes an intolerable hardship when the State declines responsibility for the wrong-doing of any of its subordinates when acting as its servants or agents. An ordinary employer has to bear responsibility for the torts of his servants and agents in the course of his employment. The State, however, places its impeccability so high that it refuses vicarious liability for the wrongs done by its employees in its service.

Mr. O'Donoghue's paper shows that no redress can be sought against a Minister in our Courts without first

obtaining the fiat of the Attorney General. Since 1933 exceptions have been made to this rule, under the Road Traffic Act in the case of injury caused by a State-owned vehicle and under the Workmen's Compensation Act in regard to injuries received by workers in the employment of the State. Even when the fiat of the Attorney General to proceed against the State has been obtained, and it is hardly ever refused, the way of the litigant is by no means easy. The State cannot be compelled to " discover " documents in the same way as the private citizen. Even when a decree has been obtained against a government department it cannot be enforced without the consent of the government, though in practice government could not well refuse to submit to the decree. This country is one of the few civilised countries in the world which clings to those antiquated restrictions on the right of the private citizen to sue the State. Great Britain, the country from which we adopted those restrictions has abandoned them by the Crown Proceedings Act, 1947, since the passage of which the Crown may be sued for damages or on a civil claim in the same way as an ordinary citizen.

Mr. O'Donoghue's paper deals with the position of the citizen *vis-à-vis* the State in the ordinary Courts. Mr. Grogan's paper shows that there is a large and ever-growing class of cases in which the citizen cannot get to the Courts at all but has to submit to his case being heard by the Minister, a nominee of the Minister, or some administrative tribunal set up by the Minister. Appeal to the ordinary Courts from the decisions of those administrative agencies is, to a very serious extent, being excluded by law. The procedure of those agencies is not, as a rule, judicial in character. It has been laid down in *Local Government Board* v. *Arlidge* (1915), A.C. 120, that such adjudicatory agencies need not adopt judicial procedure in determining questions at issue in their enquiries but may follow ordinary departmental procedure. That is not to say that where a special form of procedure has been laid down by law for an administrative investigation any other form of procedure may be followed. It does mean, however, that, in most

cases, the complainant cannot obtain an open hearing of his dispute before a known judge. The deciding officer often remains anonymous, the plaintiff is, ordinarily, not heard orally or through counsel, he merely submits his case and evidence in writing, he need not be informed of the evidence against him, he has no opportunity of cross-examining the opposite party, the evidence need not be given on oath, no reasons need be given for the decision and, generally, there is no appeal against the decision. Needless to say, this system, which is an accompaniment and a corollary of economic and social control by government, does not inspire confidence. There is a feeling that the Minister is judge in what is almost his own cause. Even if the Minister does not hear the case himself, there is not the same confidence in the verdict of an official nominated by him to try the case as there would be if the adjudication lay with an independent judge.

A Legal Revolution

As both Messrs. O'Donoghue and Grogan point out, the social revolution of our times has necessitated a good deal of legislation by rules and orders and a good deal of adjudication by administrative tribunals. Parliamentary government, which, as the word parliament indicates, purports to be government by discussion, no longer exists in its old sense. The stately process of statutory law-making described in Mr. MacCarthy's lecture, is too slow for modern administrative requirements and, so, the Oireachtas has, perforce, delegated to the Executive the power to frame rules and orders having the force of law. The Majesty of the Law, as represented in the Courts, cannot be hustled so as to keep pace with the flow of disputes arising between the citizen and the State and, so, we get administrative tribunals to supplement our Courts of Justice. Our economic and social revolution has brought with it a legal revolution which has given us Minister-made law and Minister-made justice.

This change may be inevitable, but it is not inevitable that we should tolerate all the defects which have been

introduced with the change. Law and justice are too precious to a society to justify their being weakened even for the sake of speed and convenience in the operation of the social and economic revolution. The defects which are exposed in Messrs. O'Donoghue's and Grogan's lectures are very serious and the need of reform in our administrative law is obviously urgent. Mr. O'Donoghue points out that the French, German and other Continental people have evolved a better system of administrative justice than ours. The Americans have also made their reforms. Their Administrative Procedure Act, 1946, is a measure which could well serve as a model for us. It would ensure that important rules and regulations would be published in draft form before becoming law and that interested parties would be given a fair opportunity of presenting their objections and having them adjudicated on by an independent tribunal before the rules and regulations could come into force. It would ensure that our system of administrative adjudication would be reformed by providing that the members of administrative tribunals should be persons who are independent of the Minister and the government department concerned in the dispute, that the hearings of disputes should be conducted openly in the presence of the parties or their counsel, that the parties should have an opportunity to give evidence and to test by cross-examination the evidence given against them. The American Act provides that the evidence should be recorded and that the decision be based on the record and reasons assigned for it. A right of appeal or review to the ordinary Courts is given in all cases.

Administration through Public Corporations

The next big note of interrogation which suggests itself is connected with the administration of public services through public corporations. Those corporations are of two kinds: (1) statutory corporations set up under the authority of a special Statute which defines the objects, constitution, functions, powers and duties of the corporation and the powers of the appropriate Minister in regard to it,

and (2) government, or quasi-government, companies registered and established under the Companies Act, 1908, an Act which though designed for a different purpose, the formation of joint stock companies in an era of private enterprise, is now being extensively used in this country for the establishment of the State companies. When a statutory corporation is set up by Statute it is Parliament which brings the corporation into existence and which assigns to it its functions, powers and duties, lays down its constitution and regulates its relations with the Minister. When the Companies Acts are used to establish a corporation it is the Minister who does this through his nominees on the Board of Directors, who give the company its constitution, objects, functions, powers, duties and obligations by means of the Memorandum and Articles of Association of the Company. Parliamentary control is not entirely absent in this type of corporation or company inasmuch as its paid up capital and all funds advanced to it must be sanctioned by the Oireachtas, as must also any special privileges or powers, such as the grant of a monopoly or of authority to make regulations having the force of law which can be conferred only by legislation. Accordingly, even though a corporation may be established by a Minister under the Companies Acts without prior Parliamentary sanction, the Oireachtas can prevent it functioning by refusing capital, advances or grants and by denying it special powers and privileges. This is a purely negative control.

Parliamentary Control

The question of Parliamentary control over public corporations is of great importance for several reasons. Those corporations are often given charge of national assets, resources or services of which they may have a monopoly capable of being used to serve private interests in a manner contrary to the best interests of the public. Inefficiency, unduly high charges and the like are obvious examples of nationalised services or industries not serving the public as they should be served. From a more

theoretical, but none the less important, point of view there is the fundamental principle of democracy that every branch of public administration, even if not directly administered through a responsible Minister, should be under popular control and that control should be real. The practice of all our public corporations has not been in accordance with that principle. There is always some form of nominal, long-range control but in the short run, which really matters most—(it was Lord Keynes who said that in the long run we shall all be dead)—the control is very often unreal and ineffective, particularly so as many of those corporations are sheltered from external competition which would show up possible shortcomings in the short as well as in the long run. Following the prevailing precedents, in which Parliament has acquiesced, the Minister accepts no responsibility for the day to day management of a nationalised concern and will not answer Parliamentary questions relating to it. This portion of the work of a public corporation is, therefore, almost entirely free from Parliamentary control, though, through his power of appointing and dismissing directors and calling for information, the Minister may have much greater short-term control than he would admit Parliamentary responsibility for. The reason given for retaining popular control over those corporations is that concerns of a commercial or industrial nature cannot be managed satisfactorily under rigid Parliamentary and financial control such as is applied to matters which fall to civil service administration. Few will be inclined to deny that some relaxation of control, particularly minute financial control, may be necessary to achieve satisfactory results in commercial and industrial operations. Good results have actually been obtained under the free conditions in which the corporations now work, but it would be a mistake to hold that because freedom from control has worked well in some instances—not so well in others—there should be an indiscriminate casting off of short-term controls. This problem of achieving a nice balance between efficiency and control is discussed in Mr. Hegarty's lecture.

State Companies Established Under Companies Acts

The problem of Parliamentary control is particularly acute in regard to State companies set up by a Minister under the Companies Acts without previous Parliamentary approval. There need not be the same objection to the delegation of clearly defined administrative authority to a Statutory corporation established by an Act of the Oireachtas after full and open discussion and deliberation as there is to State companies set up under the Companies Acts by a Minister by his own personal decision. The delegation of authority from the Minister for a section of the public administration to such a company, thereby putting that section outside full Parliamentary control, is a matter which needs the closest investigation, particularly so, inasmuch as, though nominally divesting himself of authority and responsibility, the Minister may in fact retain more actual authority than is apparent or acknowledged. Our Ministers have gone far in extending the sphere of State company administration without prior Parliamentary approval. In England, on the contrary, the setting up of important public corporations has generally been preceded not only by Parliamentary but by nation-wide debate. Even though our State companies have, on the whole, worked reasonably well, which is creditable to the Ministers as well as the companies themselves, it may be questioned whether that is a sufficient justification for our Ministers, who are the responsible political servants of the people, contracting out, without previous sanction, part of their liability for public administration to independent contractors who owe no special obedience or loyalty to the people's Parliament.

Mr. Gorman's lecture on the structure of the Irish Air Companies is a case in point. Aer Lingus was incorporated under the Companies Acts at the instance of the Minister in May 1936, "to carry on and foster the business and pursuit of aviation in all its forms both within and without Ireland." Previous Parliamentary sanction not having been obtained to this venture, public funds could not at

first be invested in it. Therefore, as Mr. Gorman puts it, a foster-parent had to be found as, otherwise, the infant company would have died for want of nourishment. The foster-parent was found in Olley Air Services Ltd., which made advances to its protégé and then entered into a partnership with it to operate the air service. This company not only advanced funds but also provided the pioneering experience and, presumably, also the planes as Aer Lingus had, at the time, no capital of its own. This, perhaps, is what Mr. Gorman refers to as " the successful marriage between . . . the government policy of developing the country's commercial aviation potential . . . and an energetic progressive group of business men carrying out that policy on sound commercial lines." The marriage may have been successful but the absence of a Parliamentary blessing and dowry and the parking out of the child with a foster-parent suggests that it may have been clandestine. Cases of the kind suggest that it is most desirable that the public should develop greater curiosity about the things which are done in its name so as to prevent what might prove (which fortunately was not the case with Aer Lingus) to be unhappy experiments. Democracy cannot work successfully without a certain degree of curiosity on the part of the public.

Local Government Administration

The third aspect of Irish public administration which calls for notice is the increase in central control over our local government administration. This process of centralisation has been introduced by several Acts passed since 1922, the most important of which is, perhaps, the County Management Act, 1940. By this Act the exercise of most of the important powers and functions of local government, excepting the power to strike the rate, has been transferred from the elected council to a County Manager appointed by the Minister for Local Government on the recommendation of the Local Appointments' Commission, an agency of the central government set up by an Act of 1926. It is sometimes said that the County Management system

is modelled on the American City Management system introduced at the beginning of the present century. This is not so. The American system is not one imposed on the local authorities by a law of the central government as our County Management system is. It is a system voluntarily adopted by some, but not by all, American cities. Under this method the elected council appoints the Manager and delegates to him certain powers and duties as agent of the council. His authority is merely delegated authority for the exercise of which he remains responsible to the council, which appointed and may remove him. Our County Manager exercises many important functions independently of and to the exclusion of the elected council. He owes no responsibility to it for much of his work and may even act against its wishes. The council does not appoint him and cannot remove him without the Minister's consent, whereas the Minister has authority to require him to resign and may remove him if he refuses. In fact the Manager is certainly not, by and large, a servant of the local authority.

It is probably true that in few instances have County Managers acted dictatorily through a personal desire for power. The fact that a Manager has to appear before the public representatives frequently and answer for his stewardship would normally be a deterrent against abuse of power, but, unfortunately, it is no guarantee against the improper exercise of control by the central government through the agency of the Manager. The transfer of control from the local authority to the central government and not its transfer from the public representatives to the Manager, is possibly the greatest defect in the County Management Act.

In the U.S.A. the Manager has no authority independent of the council. His power derives from the council and not from the central government and he is definitely the servant not the master of the council. There is very little central control over local government authorities in the U.S.A.

In Great Britain, too, local government retains very

real independence, though the reliance of the local authorities on government grants has subjected them to a much greater degree of supervision and control in recent years. In Ireland, however, elected local government bodies hold a very subordinate position, more so perhaps than in any European country with the exception of France. They have not, for instance, control over their own staffs. That rests exclusively with the Manager. Writing of the position of Local Government authorities in Ireland in *Comparative Local Government*, Mr. G. Montague Harris, President of the International Union of Local Authorities, states :

> In Éire since the separation from England greater powers of control have been assumed by the central government than was at first thought desirable. Thus, under Local Government Act, 1941, " the appropriate Minister " (who is usually the Minister for Local Government and Public Health) has very wide powers to make regulations in relation to offices and their holders and can require the holder of any office to resign if he is satisfied that this is in the public interest. He may also remove from office the members of a local authority which in his opinion is not duly and effectively performing its duty.

The Minister may also interfere with the one really important power reserved to elected local councils by the County Management Act, 1940. He may, under section 30 of the Local Government Act, 1946, require them to increase the rate struck by them if he considers it insufficient and may remove the members from office if they fail to comply with his direction. Section 25 of the Local Government Act, 1941, gives him the power to remove officers of a local authority if he considers them unfit to hold their offices. Those powers of the Minister and the County Manager have only to be stated to make clear the extent to which our local councils have lost their independence.

Possibly the Irish people, on a full consideration of all the circumstances, prefer their local government institutions to be strictly subordinated to the centre and approve of the trend in that direction in recent years. If so, it is a political decision of the people which the public administrator, as such, does not question. It may be, however,—the study of Public Administration has been very neglected in this country—that the people are ignorant of the facts, or it

may be that owing to their comparative inexperience in the art of self-government they have not yet developed that sort of democratic instinct which enables them to assess at once the political merits or demerits of what is being done in their name, or, worse still, that they are too apathetic to form a political judgment of their own on the subject and are content to leave such matters to their Government. It is the duty of a writer on public administration to make known the facts and consequences of administrative policies and methods so that the citizen may have access to the knowledge if he wishes to use it. Those whose lectures appear herein have made a considerable contribution to the fulfilment of that duty. It is not for them to fight political apathy on the part of the citizen wherever it may exist. That is a matter for our political leaders.

The Civics Institute of Ireland, by whom this book is published, have also an interest and a duty in the matter. The second object of the Institute reads as follows :

" To study and investigate questions and problems affecting the welfare of the Irish public as citizens or as inhabitants of any city or rural or urban area in Ireland, and, when desirable, to take action."

The lectures contained in this book were delivered under the auspices of the Institute in connection with the course for the Diploma in Public Administration of Dublin University. The Council believe that this publication will prove to be a valuable contribution to the study and investigation of " questions affecting the welfare of the Irish public " and they offer it as such. It may be added, however, that they accept no responsibility for the views expressed by the editor and the lecturers.

F. C. KING.

Legislation—
Its Preparation and Enactment

By GERALD McCARTHY,
PARLIAMENTARY DRAFTSMAN

INTRODUCTORY

You will recollect that, after the Eatanswill Election, Mr. Pickwick was invited by Mrs. Leo Hunter to a fancy dress *déjeuner* and there met a distinguished foreigner, Count Smorltalk, who stated he was writing a book on (amongst other subjects) English politics, whereupon Mr. Pickwick observed "The word politics, sir, comprises, in itself, a difficult study of no inconsiderable magnitude." Well, the subject of this lecture, though not a difficult study—at least it should not be so to one who has been engaged in drafting Bills for twenty years and upwards—is one of considerable magnitude and to deal with it, other than in a general way, in the course of a single lecture would not be possible. I will try, however, to give you as full an outline as I can within the next forty minutes or so. At the end I will give you some authorities which you can consult if you wish more detailed information on the subject.

CLASSIFICATION OF BILLS

First, let me do some preliminary clearing of the ground and say something about the various classes of Bills. The main division is into—

1. Public Bills.
2. Private Bills.

PRIVATE BILLS

I will take Private Bills first and say a few words in passing about them and then drop that class. Private Bills are distinct from Private Members' Bills. The latter

are a class of Public Bills and I will touch upon them later. Private Bills are intended to deal with private interests as distinct from matters of public policy. They are governed by a separate set of Standing Orders of the Houses and incidentally used to provide a good deal of profitable work for the legal profession. Alas, they are becoming rarer and rarer.

PUBLIC BILLS

Now to come to public Bills. These fall into four main classes—

1. Bills amending the Constitution.
2. Finance Bills.
3. Consolidation Bills.
4. What I will term ordinary Bills.

I do not propose to say more about the first three kinds, except that a Bill amending the Constitution requires confirmation by the People by means of a Referendum, a Finance Bill is one imposing taxation and a Consolidation Bill is one which collects in one Bill the statute law on a particular subject contained in a series of Acts.

ORDINARY BILLS

This leaves us with ordinary Bills which are divided into—

1. Government Bills.
2. Private Members' Bills.

Private Members' Bills are comparatively few and are as a rule simple in principle, so we will exclude these too. You will take me then, when I talk of a Bill, as referring only to an ordinary Bill sponsored by one of our Ministers.

MAIN DIVISIONS OF THE SUBJECT

The subject falls into three main heads.

Firstly. The preparation of a Bill,

Secondly. The passage of the Bill through the Houses of the Oireachtas,

Thirdly, The presentation of the Bill to the President for his signature and his functions in respect of the Bill,

and I will deal with these heads in that order.

The preparation of the Bill

The preparation of a Bill falls into two sub-heads—

1. The instructions for the Bill.
2. The drafting of it,

and in dealing with the matter I propose to take you behind the scenes and tell you something about what happens before the Bill becomes public property.

A file is brought to the draftsman containing a Minute from one of the Departments of State addressed to the Attorney General with some documents attached to it. Let us look at the Minute. It runs as follows—

I am directed by the Minister for ———— to state that the Government, at a meeting held on the 2nd November, 1949, granted authority for the drafting of a Bill to provide for (*here are indicated the purposes of the Bill*). I enclose two copies of—

1. The General Scheme as approved by the Government.
2. The Memorandum presented to the Government.

I am to request that you will be good enough to arrange for the preparation of a draft Bill on the lines of the General Scheme. As the Minister is anxious to introduce the necessary legislation at an early date, he would be glad if the drafting of the Bill could be expedited.

At the foot of the Minute is written in ink " P.D.—3/11/49. P.P. O'D." " P.D." stands for Parliamentary Draftsman whose office forms part of the Attorney General's Department and " P.P. O'D." stands for Philip P. O'Donoghue, Senior Counsel, Legal Assistant to the Attorney General, who has delivered several lectures under the auspices of the Institute.

Now let me take you back a bit and tell you how the general scheme of the Bill (which was sent with the Minute) came to be framed.

The promoting department has come to the conclusion

that legislation on a particular subject is required. It first prepares a general scheme of the proposed legislation. This is sent to the Department of Finance, which I may here mention is concerned in all legislation. Finance—as Lord Oxford and Asquith put it—is the master science of politics. Questions of finance arise on every Bill—it may be the question of the appointment of additional staff required to administer the new legislation when it becomes law.

With the general scheme is sent a Memorandum setting out—

(*a*) the need for and the purposes of the proposed legislation,

(*b*) its relation to existing legislation,

(*c*) an estimate of the cost to the Exchequer of the operation of the measure.

The General Scheme and the Memorandum are also sent to any other Department which may be concerned.

When the Department of Finance and the other Departments concerned have concurred in the General Scheme (amended if necessary as the result of representations made by the Departments) the Scheme is sent to the Government with a request for their authority to have the Bill drafted on the general lines of the Scheme. There is also sent to the Government a memorandum on the same lines as that previously sent to the Department of Finance and the other Departments concerned and calling special attention to any reservations or criticisms raised by those Departments. The Government at a Cabinet meeting consider the Scheme. If the memorandum indicates that any points of difference have arisen between the promoting Department and the other Departments, the Ministers in charge of the Departments put their respective cases and the Government give their decision on these.

The drafting of the Bill

Now, let us return to the draftsman whom we left with the Minute, the General Scheme for the Bill and Explanatory Memorandum before him. As the Bill is required in

a hurry and the completion of the other jobs in hand is not a matter of urgency, he makes a start on the drafting of the new Bill.

A description of the technique he employs does not fall within the scope of this lecture and I will not say anything about the craft or—perhaps you will permit me to say—the art of drafting—for as Lord Birkenhead once observed : " Draftsmen are craftsmen who aspire to be artists." What the draftsman should aim at is, of course, lucidity or clearness of expression. To paraphrase what an eminent English judge—Sir Fitzjames Stephens—said, an Act of Parliament should be drafted, not merely with such a degree of precision that a person reading it in good faith can understand it, but, if possible, with such a degree of precision that a person reading it in bad faith cannot misunderstand it—or better still, pretend to misunderstand it. This degree of perfection is difficult to attain and the difficulty is not always overcome. Some years ago an English judge, speaking of a section in the British Trades Marks Act, 1938—the section contained two hundred and fifty-three words—said " I doubt if the entire statute book could be successfully searched for a sentence of equal length which is of more fuliginous obscurity "—the adjective, I discovered on referring to the dictionary, means sooty, and only a few months ago another judge—also English—stated that an Act of Parliament which he had to interpret was, in certain respects, a miracle of ineptitude.

As artists—to which class I have made a half-claim draftsmen belong—are sometimes slightly touchy when their masterpieces are subjected to adverse criticism, it may be well for practitioners of my art to bear in mind another judicial observation—this time by Lord Halsbury, a former English Lord Chancellor—" I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which, in fact, has been employed."

Before telling you how the Bill is drafted, I should say

something about the form a Bill takes. I cannot do better than quote from a book—which I have found most valuable in the preparation of the lecture—*Notes on Procedure*, compiled by the late Mr. Seán Malone, Clerk of the Senate :

The form in which a Bill is presented is nowhere specifically laid down but it is governed by the general requirements as to the form of the resulting statute prescribed in the Interpretation Act, 1937.[1] That Act provides that all Acts of Parliament shall be divided into sections numbered consecutively; that these sections may be subdivided as is convenient; that the sections may, where convenient, be grouped into Parts, Chapters, etc., numbered consecutively; and that such Acts shall be capable of being cited by their short titles. Standing Orders relating to the detailed consideration of Bills presume that Bills follow a standard pattern, viz., a long title, a preamble (if desired), consecutively numbered sections and schedules (as required). The form of a Bill is thus the same as in the British Parliament with the exception of the enacting words, the formula in use in the Irish Parliament in all cases being—" Be it enacted by the Oireachtas as follows :—."

Now, I will tell you something about how the Bill is drafted. The methods I am about to describe are my own.

We will assume that the Bill is a fairly large and comprehensive one. I first make myself familiar with the details of the Scheme and make a note of any Acts which will be affected by the Bill. When I have got the gist of the matter I start to prepare a rough preliminary draft and in the course of doing so invariably get in touch with the officer in the promoting Department who is looking after the Bill to clear up points which have arisen. When the preliminary draft is completed I send a copy to the officer concerned. When he has considered the draft we have a conference and settle up any points which he raises—and there are usually many. This may involve very many alterations of the preliminary draft and, if it does, a second preliminary draft is prepared and the same procedure is gone through as in the case of the first draft. Sometimes a third draft is required. Well, even the weariest river winds somewhere safe to sea, and eventually a draft is

[1] This Act is a draftsman's dictionary, it defines expressions in common use in Acts of Parliament and lays down certain rules for the interpretation of Acts.

prepared to our satisfaction—for the time being. The Bill is then retyped in final form and sent to the Attorney General, any points which require his particular attention being raised in an accompanying minute. The Attorney General then forwards it to the promoting Department who, after considering the draft, sometimes comes back to the draftsman for amendments. The draft is then circulated to the Department of Finance and to any other Departments concerned and they may or may not require some amendments to be made. Next the Bill is printed on white paper and the draft becomes what is called "the white print." The white print is then submitted to the Government for their approval and, assuming that is given, the Minister in charge of it is authorised to introduce the Bill. And now we have our Bill ready for introduction into one or other of the Houses of the Oireachtas.

The Passage of the Bill through the Houses of the Oireachtas

I now come to the second main head of this lecture—the passage of the Bill through the Houses of the Oireachtas. Bills may be introduced in either House. We will assume that ours is being introduced in the Dáil. This is the usual practice, though recently a number of Government Bills have been introduced in the Seanad.

The passage through the Dáil

The Minister in charge of the Bill causes copies of its Short and Long titles to be lodged with the Chairman of Dáil Eireann and these, on being accepted, are printed on the Order Paper of the House. There are five separate stages in the passage of a Bill and we now come to the First Stage.

FIRST STAGE

On the day on which the Short and Long titles appear on the Order Paper, the Minister in charge of the Bill moves—generally at the commencement of Public Business

(i.e. after Questions are over)—for leave to introduce it. If the motion is opposed—it rarely is—the Minister makes a brief explanatory statement and after one from the objecting Deputy, the Chairman puts the question. If leave is given, an order is made fixing the date for second reading and the Bill, a copy of which has been lodged with the Chairman, is printed and makes its first public appearance on the green paper with which you are all familiar. There has grown up in recent years the practice of circulating with a Bill a memorandum setting out briefly the main features of the Bill. We now come to the Second Stage.

SECOND STAGE

On the date fixed for the Second Stage, the short title of the Bill appears on the Order Paper and the Minister sponsoring it moves its second reading. The debate is confined to the general principle of the Bill. Any Deputy can speak once on the debate and the Minister winds up the debate and replies to criticisms made in the course of it. If the motion is carried—and we must assume it is as otherwise the nearly noiseless tenor of my way could not be kept and—worse still—we might land ourselves into a general election, the Bill is by motion referred to the Dáil sitting in Committee or to a special committee and a date fixed for the commencement of the third or Committee Stage. A reference to a Special Committee is unusual and we will take it the reference is to the whole Dáil.

THIRD OR COMMITTEE STAGE

On the date fixed for the commencement of the Committee Stage the Bill appears on the Order Paper. On this Stage, unlike the Second Stage, there is no limit to the number of times a Deputy may speak. This is the most testing time in the passage of the Bill. It is also the most testing time for the Minister, who has to be both firm and tactful if he wants an easy journey. The Standing Orders of the House provide that the Bill must be voted on section by section and not as a whole, and that any section of the

Bill may be amended or deleted and new sections inserted. Any Deputy (including the Minister in charge of the Bill) may give notice of amendments he wishes to move. Amendments which are not relevant to the subject-matter of the Bill or which conflict with the principle of the Bill as read a second time may not be moved.

The amendments are printed on green paper and circulated with the Order Paper. There generally are, in a large and comprehensive Bill, a number of Government amendments. Some of these may be to meet points raised on the Second Reading, others the result of representations made by outside bodies, others which have occurred to the promoting Department or other Departments. Some of the Government's amendments are what are called "drafting amendments" and make no changes in substance. All the Government amendments are drafted in the Parliamentary Draftsman's Office.

Now, as regards private Deputies' amendments. In the House of Commons an amendment put down by a private member has been accepted sometimes—in the old days at least—by the Minister in the heat of a debate. Sometimes the amendment had reactions on other sections of the Bill which were not taken into account when the amendment was accepted and the result sometimes was that the British Bill emerged from committee in a rather chaotic condition. In the Dáil the practice of dealing with a private member's amendment, the principle of which appears to the Minister to be acceptable, is this, the Minister undertakes to consider the amendment further and if he approves of it to bring in his own amendment on the next stage. If the Minister decides to do so, the necessary amendment is prepared in the Parliamentary Draftsman's Office. You will see, therefore, who is to blame if the new amendment, being one which affects other sections, is not coupled with appropriate amendments of those other sections.

As I have already said, each section is voted on separately. The procedure is, the Minister moves that a particular section stand part of the Bill. Amendments to the section may then be moved. When any section is moved a Deputy

may move as an amendment that a new section be inserted before it in the Bill. This amendment is taken first, and if passed, the new section proposed becomes the subject of the motion. The original motion is not defeated by the passage of such an amendment but merely postponed. When the original motion is resumed and, there are any amendments, the amendments are debated and if passed, the motion that section so and so as amended stand part of the Bill is put and, we will assume, passed. If there are no amendments, the motion is put that the section stand part of the Bill. When every section and the Schedules (if any) have been dealt with in the way I have indicated, the Bill is returned to the Dáil and reprinted with all the amendments inserted in Committee.

FOURTH OR REPORT STAGE

We now come to the Fourth or Report Stage. Notice is given of a motion to receive the Bill for final consideration. Sometimes when the Bill has been very heavily amended in Committee, or where it is desired to move amendments which cannot be moved on the Report Stage, the Bill is recommitted and undergoes a second Committee Stage.

Amendments may be put down on the Report Stage with certain limitations. On the Report Stage the Bill is not dealt with section by section as on the Committee Stage and the only matters debated are those which are raised by amendments.

If any amendments have been inserted on the Report Stage, the Bill is again reprinted with those amendments.

FIFTH AND LAST STAGE

We now come to the Fifth and last Stage in the Dáil. The Bill is put down on the Order Paper for a particular day and a motion moved that the Bill do now pass. Assuming that the motion is passed, the Bill is transmitted to the Seanad.

It may be interesting to note here the respects in which the procedure for passing Bills in the Dáil resembles that of the House of Commons. In the House of Commons a

Bill has three main stages, called first reading, second reading and third reading. The first reading is the same as our first stage, the second reading covers our second stage, committee and report stage, and the third reading our fifth stage.

Passage of the Bill through the Seanad

Let us now go to the Seanad, to which the Bill has been transmitted. Like the Dáil, there are five stages in the passage of a Bill through the Seanad. Our Bill having been passed by the Dáil is deemed to have passed its first stage in the Seanad. The Standing Orders of the Seanad dealing with Bills are more or less on the same lines as those of the Dáil.

The Seanad have to deal with a Bill during a limited period (referred to in Article 23 of the Constitution and subsequently in this lecture as "the stated period"). "The stated period" is the period of ninety days commencing on the day on which the Bill is first sent to the Seanad or such longer period as both Houses agree upon.

The Seanad may within "the stated period"—

1. Pass the Bill without amendments.
2. Pass the Bill with amendments.
3. Reject the Bill.
4. Take no active steps, i.e. neither pass the Bill (with or without amendments) nor reject it.

If the Bill is passed without amendments, the Bill we may say is into harbour, but not quite, as I will tell you later. It is printed with the endorsement "As passed by both Houses of the Oireachtas."

If the Bill is passed with amendments the Bill is returned to the Dáil with a certificate specifying the amendments.

(1) If the Dáil accept the amendments, the Bill is printed with the endorsement I have mentioned.

(2) If the Dáil disagree with all or any of the Seanad's amendments or agree to all or some of the amendments with amendments of their own, the Bill is

returned to the Seanad. The Seanad may then insist or not insist on their amendments. If they gracefully give way, the matter is finished.

I will now tell you what happens if the Seanad insist on their amendments or if they reject the Bill or take no active steps as regards it. Article 23 of the Constitution provides for these contingencies. That Article—I give you its terms generally—provides that the Bill shall be deemed to have been passed by both Houses, if the Dáil passes a resolution to that effect within one hundred and eighty days after the expiration of " the stated period." You will see from this that the Dáil is the Master House. If Article 23 operates on the Bill it is printed with the endorsement "As deemed to have been passed by both Houses of the Oireachtas."

Mr. Seán Malone's book, to which I have already referred, contains an interesting statement on this matter.

Within the above constitutional provision (i.e. Article 23 of the Constitution), however, a working arrangement has been established whereby conferences between representatives of both Houses may be held to resolve differences over amendments made by the Senate to Bills. There has been one such conference since the coming into operation of the existing Constitution as the result of which agreement was reached.

The Presentation of the Bill to the President for his signature and his Functions in respect of the Bill

The Bill is now passed or deemed to be passed by both Houses of the Oireachtas and has forthwith to be presented to the President for his signature. The President is required to sign the Bill on the fifth, sixth or seventh day after the date on which it is presented to him. But these statements require some qualification. If our Bill has been passed against the wishes of the Senate, a majority of the members of the Seanad and not less than one-third of the members of the Dáil may, not later than four days after the Bill is deemed to have been passed by both Houses, present a petition to the President requesting him to decline to sign and promulgate the Bill as law on the ground that it con-

tains a proposal of such national importance that the will of the people ought to be ascertained thereon. On receipt of the petition the President is required to consider it and to pronounce his decision thereon after consultation with the Council of State within ten days after the Bill is deemed to have been passed by both Houses unless the Bill is the subject of a reference to the Supreme Court, a matter to which I will presently refer.

If the President decides that the proposal is of such national importance that the will of the people ought to be ascertained thereon, he must decline to sign the Bill unless the proposal has been approved either—

i. by the people at a Referendum within a period of eighteen months from the date of the President's decision,' or

ii. by a resolution of Dáil Eireann passed within the said period after a dissolution and re-assembly of Dáil Eireann.

If the proposal has been so approved, the President is required to sign the Bill upon its being presented to him for signature.

If the President does not accept the case put forward in the petition he is required to sign the Bill not later than eleven days after the date of its notional passing unless he refers the Bill to the Supreme Court.

The President may, after consultation with the Council of State, not later than seven days after it is presented to him for signature refer the Bill to the Supreme Court for a decision whether the Bill or any particular provision of it is repugnant to the Constitution. In the case of the Offences Against the State Bill, 1940, the whole of which was so referred, the Court decided that the Bill was not unconstitutional, but in the case of the School Attendance Bill, 1942, section 4 of which was so referred, the Court decided the section was unconstitutional and the President declined to sign it.

We will assume that our Bill has not had to run either of these gauntlets or if it did, emerged unscathed, and that the President has signed it.

A notice subsequently appears in the *Iris Oifigiúil* to the effect that the Bill has become law.

Our Bill is now an Act. If the Act provides that it is to come into operation on a future date or is to be brought into operation by means of an order, the Act only comes into operation on that date or when the order is made, but if there is no such provision, then it comes into operation at once. I enter one caveat—it may be at any time afterwards challenged in the Courts on the ground that it is unconstitutional.

I promised at the beginning to give you a list of the authorities. I append the list.

AUTHORITIES

I. Drafting of Bills

* 1. *Practical Legislation. The composition and language of Acts of Parliament and Business Documents*, by Lord Thring. (Murray, 1902.)

* 2. *Legislative Methods and Forms*, by Sir Courtney Ilbert. (Clarendon Press, 1901.)

3. *Legislative Drafting and Forms*, by Sir Allison Russell. (4th edition, 1938.) (Butterworth & Co.).

II. Enactment of Bills

† 1. *The Constitution of Ireland* (Articles 20 to 27).

†‡ 2. *Standing Orders of Dáil Eireann relative to Public Business* (1943).

† 3. *Standing Orders of Seanad Eireann relative to Public Business* (1938).

† 4. *Notes on Procedure in the Houses of the Oireachtas*, compiled by the late Mr. Seán Malone, Clerk of the Seanad (1947).

* Copies in the National Library.
† On sale at the Government Publications Sales Office, G.P.O. Arcade, Dublin.
‡ A new edition (1950) has been published, 22nd November, 1949.

The Citizen versus the State

By P. P. O'DONOGHUE, S.C.
LEGAL ASSISTANT TO THE ATTORNEY GENERAL

We are familiar with the numerous ways in which legal proceedings can be brought by or on behalf of the State and its Departments against the citizen. I would propose to touch on some features of the reverse process—and its development. Many references will be made to judicial decisions in England which frequently influence our own Courts and we must keep in mind the words of Lord Beaconsfield : " England is not governed by Logic—she is governed by Parliament," and I might add a Parliament uncontrolled by a written Constitution. As our own position has always to be viewed in the perspective of the Constitution that foundational instrument must be examined. As the rights of the citizen will depend on the obligation of some Governmental authority, we can approach our task from either the viewpoint of the duty of the Government or the legal and constitutional right of the citizen.

CONSTITUTIONAL

In the fifty Articles of our Constitution we notice briefly some of the Articles which are relevant. In Article 13. 8 the President is declared not to be answerable to any Court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and duties. In the immediately preceding Article, however, provision is made by which the behaviour of the President may be brought under review on impeachment. A proposal to impeach the President must originate in one or other of the legislative Chambers and then only on a notice of motion signed by not less than thirty members and carried

by not less than two-thirds of the total membership of that House. The investigation of a charge is to be carried out by or at the instance of the other House and if, as a result of such investigation, that other House passes a resolution supported by not less than two-thirds of the total membership of that House that the charge has been sustained and was such as to render the President unfit to continue in office, this Resolution shall operate to remove him from office.

In Article 15. 13 a privilege from arrest is conferred on members of each House of the Oireachtas while going to or returning from either House and also while they are in the precincts of either House, but this does not extend to cases of treason, felony, or breach of the peace. The members are also privileged from arrest in respect of utterances in either House and they are declared not to be amenable to any Court in respect of such utterances other than the House itself.

Article 40. 4 which enshrines the ancient right of habeas corpus and imposes on our Superior Courts the duty to order the release from custody of any person unless the Court is satisfied that he is being detained in accordance with law.

I also invite your attention to Article 34. 3 to which a further reference will be made later on and which Article is an unqualified declaration that the High Court is invested with full, original jurisdiction in and power to determine all matters and questions of law or fact, civil and criminal.

Criminal Cases

An introductory word about the scope of appeal in criminal cases which is open to persons convicted of offences may not be out of place.

The State itself has obviously no criminal responsibility. The criminal responsibility of a public servant is the same as that of the private citizen. If convicted of an offence in the District Court, the right of appeal to the Circuit Court

exists and the proceedings in the latter Court are a rehearing and the determination of the Circuit Court is final on questions of fact for all purposes. Where it is appropriate which is nearly always a case where there is want of jurisdiction, or excessive exercise thereof, certiorari would lie both as against the District Court and Circuit Court. That means that you could apply to the High Court to quash the determination of the inferior tribunal, and the High Court ruling is open to a further appeal to the Supreme Court. On questions of law alone there is also an avenue of appeal by way of case stated from the District Court or Circuit Court hearing an appeal from the District Court to the High Court and in certain cases to the Supreme Court. In cases of trials on indictment which means trial by a Judge and Jury either in Circuit Court or Central Criminal Court for the graver crimes there is an appeal from a conviction and/or sentence to the Court of Criminal Appeal. From the latter any further appeal is only possible to the Supreme Court if the Court of Criminal Appeal or the Attroney-General is satisfied the case is one involving a point of law of exceptional public importance.

The Civil Jurisdiction

As we feel more comfortable on the civil side of the Court than as an appellant in a criminal proceeding I turn to the remedies on the civil side which are possessed by the individual against the State and State servants. Any one of us may find himself with a justiciable cause of complaint against the State, or a Minister of State or some State official, be he exalted or humble, for action taken in the course of his public duties. A claim of this kind will fall under one or other of these four heads :

(*a*) Breach of contract.

(*b*) Claim in tort which means a wrong independent of contract, such as assault or defamation.

(*c*) A declaratory proceeding seeking a definition and determination of legal rights.

(*d*) A claim for relief of the kind which formerly was made available by means of the old prerogative writs of mandamus, certiorari, quo warranto, prohibition and habeas corpus and which date back to the early times when the King as the fountain of justice actually dispensed this commodity in person, presiding in the King's Bench, or where he was presumed to be present in the contemplation of the law.

BREACH OF CONTRACT

It will be appreciated that the entire of this law has come down to us from the past and we will see what slight modifications we have been responsible for effecting since 1922. In the forefront of the English constitutional system is the legal immunity of the Sovereign which finds expression in the maxim that the King can do no wrong. It follows that no criminal proceeding or civil action lies against the Crown. The resourcefulness of the early lawyers sought and found a remedy for some of the hardships which flowed from this maxim. It took the form of a proceeding known as a Petition of Right, which was ultimately regulated by statute. (*Petition of Right Act*, 1860. *Petition of Right (Ireland) Act*, 1873.) The only cases in which the petition of right was open to the subject are where the land, or goods, or money of a subject had found their way into the possession of the Crown, and the purpose of the petition is to obtain restitution, or if restitution could be given, compensation in money, or when a claim arises out of a contract, as for goods supplied to the Crown or to the public service. It did not extend to cases of wrong alleged to be done by the King or his servants acting on his behalf.

This was the extent of the citizen's remedy for breach of contract on the part of the Crown. Moreover it was laid down in 1786 in the case of *McBeath* v. *Haldimand* (I.T.R. 172) that on general principles of agency, and also on grounds of public policy the officers of the Crown were not liable on contracts entered into on behalf of the Crown. Our State was in its infancy when the Courts here had to consider the application here of these principles in *Kenny* v.

Cosgrave, (1926) I.R. 517 and *Leen* v. *President of Executive Council and Ors.*, (1928) I.R. 408. In the former it was held that an action brought against a defendant upon a contract entered into by him as a Minister of State, dealing and dealt with as such, cannot be sustained against such defendant personally. This is regarded as settled law since the old case of *Macbeath* v. *Haldimand* (I.T.R. 172) decided in the Court of King's Bench in England in 1786. In the case *Leen* v. *President of Executive Council and Ors.* (1928) I.R. 408, it was decided that action is unsustainable against the Executive Council on any ground. *Kenny* v *Cosgrave* was followed. Kennedy C.J. reserved for future consideration the position and rights of a person claiming payment of a specified sum payable to him and proved to be included in the moneys which the Minister for Finance is authorised by a particular Appropriation Act to issue out of the Central Fund.

Petition of Right is now supplanted here by a right of action against the Minister of State concerned who has been made a corporation sole by Ministers and Secretaries Act, 1924. The fiat of the Attorney-General is required. A statement of facts, with copy draft summons or civil bill and certificate of counsel that the claim is proper to be allowed are sent to the Attorney-General and only in the one or two cases in thirty years has the fiat been refused.

Claims in Tort

When you have learned of the limitations on the scope of the remedy for breach of contract it will not come as a surprise to be told that the maxim that the King can do no wrong also prevented any defendant in an action in tort pleading the authority of the Sovereign by way of defence. Such a plea is untenable. The personal responsibility of the actual wrongdoer or the person actually responsible for the trespass remains. This question also came before our Courts in *Carolan* v. *Minister for Defence*, (1927) I.R. 62, in which it was held that the Minister for Defence is not liable for the negligent act of a soldier on duty. Members of Defence Forces are servants of the public in the employ-

ment of the Government, and, as such, fellow servants of the Minister for Defence, and for their neglect and default he would not *prima facie* be liable.

Lord Wensleydale in *Mersey Docks and Harbour Board* v. *Gibbs* (L.R.I.H.L. 93), approving of observations of Blackburn J. in the Court below said, " When a person is acting as a public officer on behalf of the Government, and has the management of some branch of Government business, he is not responsible for the neglect or misconduct of servants, though appointed by himself in the same business." Blackburn J. has also said, referring to a line of well settled authorities, " all that is decided by this class of case is, that the liability of a servant of the public is no greater than that of the servant of any other principal, though the recourse against the principal when it is the public cannot be by an action." The ordinary employer would be liable for the torts of his servant occurring within the scope of the employment.

In the Road Traffic Act, 1933 (and the Workmen's Compensation Act, 1933) we have, however, broken away from the ancient rule and in respect of negligence caused by the driver of a State-owned vehicle, the party injured by such negligence may, without seeking the fiat of the Attorney-General, bring an action against the Minister for Finance and recover damages if successful. The Minister is given the remedies by way of defence which an employer would have if sued in like circumstances in respect of the negligence of his employee. He may also raise the Public Authorities Protection Act, 1893, which requires proceedings to be instituted within six months from date when cause of action arose, and in certain cases where the doctrine applies has successfully pleaded the common employment of the injured party and the negligent driver. The personal liability of the driver of the State-owned vehicle is not disturbed but you will not be surprised to hear that most of those injured in road accidents in which State-owned vehicles are involved display a chivalrous preference to pursue the Minister of State for compensation rather than the driver.

While the passing of our Road Traffic Act, 1933, marked an advance in legislation conferring a right of action on the citizen injured by a State-owned vehicle, our priority has been displaced by the sweeping provisions of the Proceedings Against the Crown Act, 1947, a most progressive measure which will repay a perusal and which as a general rule makes the Crown [that is the several public departments] amenable in the Civil Courts in the same manner as a private citizen.

Declaratory Proceedings

Besides the form of action against a Minister of State which is principally concerned with contract, there is a more general proceeding known as the declaratory action. For our purposes we need not trace this further back than 1911, when the well known case of *Dyson* v. *Attorney-General* was decided (1911) 1 K.B. 410. *Dyson's Case* arose when a declaration was sought that certain income tax forms were *ultra vires*. It was strenuously urged by the Crown that this was so to speak "an action in the air" and "inconvenient;" that no concrete issues were involved and that a declaration of the kind should not be made and the claim seeking it did not lie within any of the recognised forms of relief.

Farwell L.J. in *Dyson's Case*, page 423, in dealing with argument that declaratory actions would be inconveniently numerous said: "But the Court is not bound to make declaratory orders and would refuse to do so unless in proper cases and would punish with costs persons who might bring unnecessary actions; there is no substance in the apprehension, but if inconvenience is a legitimate consideration at all, the convenience in the public interest is all in favour of providing a speedy and easy access to the Courts for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory powers by Government Departments and Government Officials having regard to their growing tendency to claim the right to act without regard to legal principles and without appeal to any Court."

In *Eastern Trust Company* v. *McKenzie, Mann & Co., Ltd.* (1915) A.C. 759, Sir George Farwell, in delivering judgment of P.C., said : " There is a well established practice in England in certain cases where no petition of right will lie, under which the Crown can be sued by the Attorney-General and a declaratory order obtained as has been recently explained by C.A. in England in *Dyson* v. *Attorney-General* (1911) 1 K.B. 410. It is the duty of the Crown and of every branch of the Executive to abide by and obey the law. If there is any difficulty in ascertaining it, the Courts are open to the Crown to sue, and it is the duty of the Executive in cases of doubt to ascertain the law, in order to obey it, not to disregard it."

A perusal of the Irish Law Reports for the last twenty years will reveal the frequent resort to the declaratory action and the indisposition of our Courts to discourage those who seek relief in this way, by setting any limitations to the field within which such proceedings are brought.

Prerogative Writs

What were called prerogative writs were formerly issued and amongst the forms of this relief were :—

Mandamus was an old prerogative writ granted to command a person to perform some public or quasi public legal duty, which he has refused to perform, and where no other adequate remedy is available. It is discretionary.

Prohibition issues whenever an inferior Court acts without jurisdiction or in excess of jurisdiction, and requires the proceedings in the inferior Court to be stayed or peremptorily stopped.

Certiorari writ was issued upon cause shown, to remove civil or criminal proceedings from an inferior Court to the High Court for the purpose of being quashed usually. Crown was entitled to this writ as a matter of right and as of course according to Blackstone.

Quo Warranto was a high prerogative writ issued against one who usurped or claimed any office, franchise or liberty of the Crown to inquire by what authority he supported

his claim in order to determine the right. Procedure by information in the nature of a *quo warranto* had for a long time past taken the place of the ancient writ.

High Court Rules of 1926—O. IXI RR. 1 and 2—the Rule making authority removed some of the old procedural features by which this relief was made available by a writ, and an order of the Court was substituted therefor. I merely mention this in passing because in the course of a cursory glance at recent English legislation I noticed that under the Administration of Justice (Miscellaneous Provisions) Act, 1938, section 7, the prerogative writs of mandamus, prohibition and certiorari were no longer to issue and in lieu thereof orders of mandamus, prohibition and certiorari should be made with a right of appeal. Likewise section 9 of that Act abolishes informations in the nature of *quo warranto* and substituted an injunction together with an order declaring the office vacant, if need be.

These prerogative writs did not always issue as a matter of course without showing some probable cause why the extraordinary power of the Crown should be called to the party's assistance.

Habeas Corpus is dealt within the 40th Article of the Constitution which is concerned with personal rights, and as I observed at the beginning the right to obtain release from custody is complementary to the declared obligation of the High Court to allow such an order to go unless satisfied that the detention is in accordance with law.

No action will lie against a Judge for acts done or words spoken in his judicial capacity. This applies to Courts generally and not only to Courts of record. It is essential that those appointed to administer the law should do so under its protection, independently and freely, without favour and without fear. This provision is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the Judges should be at liberty to exercise their functions without fear of the consequences. This could not be secured if the judiciary were in hourly fear of actions being brought against them and of having a question submitted

to a Jury whether a matter on which judicial comment was made was or was not relevant to the case before the Court.

Administrative Law in Britain

"In the British Constitution there is no such thing as the absolute separation of legislative, executive, and judicial powers; in practice it is inevitable that they should overlap. In such constitutions as those of France and the United States of America, attempts to keep them rigidly apart have been made, but have proved unsuccessful. The distinction is none the less real, and for our purposes important. One of the main problems of a modern democratic state is how to preserve the distinction, whilst avoiding too rigid an insistence on it, in the wide borderland where it is convenient to entrust minor legislative and judicial functions to executive authorities."

This is the view of the British Committee on Ministerial Powers as stated in paragraph 5 of their report.

The truth is that if Parliament were not willing to delegate law-making power, Parliament would be unable to pass the kind and quantity of legislation which modern public opinion requires.

The brunt of the modern criticism upon the growth of administrative law in Britain falls on the tendency in legislation to make the decisions of the special tribunals final and conclusive and not open to review by the Courts. In England the position is, of course, that the Parliament is supreme and provided there are explicit terms inserted in a statute that is the end of the matter. The Courts will, however, upset subordinate legislation not authorised by the parent Act. This has been established in many cases but I will refer to two only.

(i) *Paul* v. *Wheat Commission*, (1937) A.C. 139. Section 5 of the Wheat Act, 1932, laid down that bye-laws may be made providing for final determination by arbitration of disputes arising as to such matters as may be specified in the bye-laws. One of the bye-laws framed went so far as

to say, " the Arbitration Act, 1889, shall not apply." Held that this exclusion was *ultra vires* and invalid.—Judgment of MacMillan.

(Atkin, Russell, Hailsham L.C. and Wright concurred.)

(ii) *R.* (*Yaffe*) v. *M. Health*, (1930) 2 K.B. and (1931) A.C. 497.

Judgment of House of Lords by Dunedin (approved by Warrington, Tomlin, and Thankerton—Russell dissenting).

The Housing Act, 1925, enabled the Minister to make an order under the Act " which shall have effect as if enacted in the Act." The House of Lords decided that an order which is inconsistent with the provisions of the Act which authorises it is bad.

Lord Dunedin and Lord Tomlin recognised that express language in a Statute could prevent any intervention by the Courts. But, of course, such exclusion of the Courts should be expressed in the clearest possible terms.

The Position in Ireland

In this country, however, we have to keep in mind that Article 34 (3) of the Constitution endows the High Court with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. It is suggested that this constitutional provision would render impossible any express exclusion of the High Court by way of declaratory action or otherwise being validly inserted in legislation. Article 37 of the Constitution does allow the establishment of special tribunals for certain purposes. It is as follows :—

> 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 a person or such body of persons is not a Judge or a Court appointed or established under the Constitution.

In *Rooney's Case* (1920) 2 I.R. 355 in which the Local Government Board in the exercise of its powers to determine eligibility for the old age pension in a final and conclusive

form did so after the time had elapsed for an appeal, the Board were held to be entitled to do so and Gibson J. said that the terms " final and conclusive ", were probably intended to exclude Treasury, govermental or judicial interference. The Board is not bound by its previous decision though such decision is final and conclusive as regards external authorities. The Court could not act as an appellate Court and correct erroneous decisions. It is only when the inferior tribunal declines or fails to exercise jurisdiction that the Court can interfere. In the same case Kenny J. said, " Unless we are of opinion the Local Government Board have exceeded their jurisdiction we have no authority to interfere."

In *Murphy's Case* (1911) 2 I.R. 578, which went to the House of Lords, the question was whether the words " final and conclusive " could be relied upon to confer an old age pension on a person who was admittedly not 70 years of age. All the Courts held without hesitation that the words could not have this effect and that certiorari would always lie to quash such a determination. There is an old case of the *King* (*Martin*) v. *Mahony* (1910) 2 I.R. 695 in which dealing with the decision of magistrates in Petty Sessions it was pointed out by Gibson J. that once they are acting within their jurisdiction the magistrates had jurisdiction to go wrong as well as to go right. This truism still applies with equal force to all Courts and tribunals be they judicial or quasi judicial.

In Ireland, the High Court and the Supreme Court are the guardians of the Constitution and can invalidate any Act or regulation which is repugnant to the Constitution. Even an Act of the Oireachtas cannot deprive the High Court of its full original jurisdiction to determine all matters and questions whether of law or fact, civil or criminal. This was clearly established in the Sinn Fein Funds case, *Buckley* v. *Attorney-General and another*, [1950] I.R. 67.

There are many cases which have arisen under the Housing Acts and like legislation and the Supreme Court covered much of the ground in *The State* (*McCarthy*) v.

O'Donnell and the Minister for Defence (1945 I.R. 150). The following general principles may be postulated :— (1) Mandamus will issue to obtain a right withheld by failure to do a Ministerial act where the obligation is established. (2) Certiorari and Mandamus will issue in appropriate cases of inferior judicial and quasi judicial tribunals, but Mandamus here will only require the exercise of judicial action and will not attempt to lay down the manner in which judicial discretion may be exercised. *De Lacy Smythe's Case* (1934 I.R. 139) shews that while recourse to the High Court is always open, effective relief may be dispensed exclusively by special tribunals.

Administrative Law and Justice in France

There remains one aspect of the legal relationship between the citizen and the State to which constitutional lawyers and writers have paid a great deal of attention. We can mark the starting point of this subject by referring to the well-known chapter on the rules of law and *droit administratif* in Dicey's *Law of the Constitution.* This ground has been covered again and again by English, American, French and German lawyers and has come to be one of the most controversial topics discussed by all interested in the development of legal systems. Its interest has been heightened, of course, by the immense growth of social legislation. When Dicey wrote this tendency had not become so marked. His view, in short, was that administrative law as it existed on the Continent and, particularly, in France, was something alien to British legal traditions, and, therefore, an unacceptable principle, if not indeed mischievous, and he came to the comforting conclusion that administrative law as such had no place in the British legal system.

Raymond Poincare describes administrative tribunals in his book *How France is Governed* in the following words :

Administration and Justice are two separate domains. The better to ensure their reciprocal independence, the disputes arising out of the execution of the commands of the administrative authorities are not

submitted to the judicial authorities. A Minister or a Prefect issues an order. If this order is illegal the Government may be interpellated in the Chamber, but the civil courts will not have the right to annul the order. It is not their place to judge the executive power, nor its officials. This is a principle which was solemnly proclaimed by the Revolution. An Act of 1790 forbids the Judges, under penalty or forfeiture, to interfere in any manner in the operation of the administrative bodies. If a civil court should ever be approached with a dispute relative to an order of the Government or its agents, it must declare itself incompetent. All difficulties of this kind are taken before a special jurisdiction, known as the administrative jurisdiction.

Professor Morgan commenting on Dicey's view of the French administrative tribunals in his 'introduction' to Gleeson E. Robinson's book on *Public Authorities and Legal Liability* points out that continental critics insist on saying that whether Englishmen like it or not they have not only something like public law as distinct from private law, but even an administrative law. He cites the Public Authorities (Protection) Act, 1893, as an example. Professor Morgan goes on to say that it would not be unprofitable to examine the legal systems of countries governed by administrative law with a view to discovering how the position of the subject in those countries compares with the position in their own, and to what extent, if any, Englishmen are entitled to regard themselves as distinguished by the rule of law. The result would, he says, be somewhat chastening to their pride. He also complains that in England administrative law has been introduced in part without the administrative tribunals with a genuine judicial character which would be their justification.

Dicey's distrust of the French system has drawn on him the criticism of several other eminent authorities. Dr. C. K. Allen, for instance, writes in *Law and Orders* (page 267) : "According to the Dicey legend *droit administratif* is an elaborate system of privilege for public officials. On the contrary, a very slight acquaintance with this system will convince anybody who cares to study it that it is infinitely easier for a citizen in France to pursue a just claim against the State than in England. The modern development of the jurisdiction of the Conseil d'Etat—the highest administrative tribunal in France—has steadily

extended the liability of the State and the protection of the individual, in proportion as the activities of the State have increased in every public sphere; and the same is true of the Court of Claims in America and in most continental countries. In short, these nations have kept pace with changes in the relations between State and citizen, whereas our system of procedure still applies mediaeval methods to the modern world. But it is said that if foreign systems give an easier recourse against the State, ours preserves the Rule of Law by giving abundant remedies against the delinquent official and by forbidding him to plead State command as an excuse for his wrongdoing. The distinction is false. To begin with, in no intelligent system of administrative law can an official claim privilege for his own personal wrongdoing. Thus in the *droit administratif* a clear distinction is drawn between the *faute de service*—the act of official duty for which the higher authority is liable on the principle of *respondeat superior*—and the *faute personnelle*—the spontaneous wrongful act, outside the scope of duty, for which the doer of it is personally liable. This is the ordinary and sensible principle which runs throughout the whole modern law of agency and delegated authority. But further, where is the constitutional virtue of the English principle that any Crown servant is liable for his wrongdoing when it is highly improbable that he, as a subordinate, will be able to pay adequate damages and when, therefore, the plaintiff is dependent on the grace and favour of the Crown to recover any damages at all?"* The validity of this criticism is illustrated by the subsequent passage of the British Crown Proceedings Act in 1947.

While Dicey was severe in his treatment of the French system he quite fairly recognised that the French system as a whole had its points and that it was possible for Frenchmen to find a balance of advantage in it. Perhaps as the years have rolled on Dicey's followers might find that the French system has worn quite well and that approaching the mid-point of the twentieth century the need for an overhaul is more pressing in the British system itself.

To sum up I will suggest, for your consideration, that when you find the continental systems, notably the French, retaining administrative law through the vicissitudes of the last century and a half without any formidable internal demand for its excision, we should be slow to pronounce a condemnation of administrative law as a pernicious institution. That is quite a different thing from saying that it should be introduced in the continental form in this country. It is a continental feature which fits into its constitutional environment. In the French or German form it would be alien to us and to our constitutional make-up. At the same time it has to be recognised that the idea of special tribunals supplies a need for the modern State engaged in piling up its catalogue of social legislation. Thus we find in this country and in Britain a form of administrative law growing from day to day. While the British position is entirely at the peril of Parliament and legislative intervention we have our constitutional safeguards. Our superior Courts cannot be eliminated and if the necessary work of a judicial kind in civil matters in the course of administration is done by bodies recognised by Article 37 of the Constitution, and there is by these bodies an observance of the law of evidence and as much publicity as is practicable with an appeal on points of law by way of case stated to the High Court, I do not share the gloomy forebodings of those who think that this tendency is disastrous or that Justice will not be blind but will also lose her voice and touch.

I have attached a list of important cases on the Constitution decided since the 1937 Constitution came into operation.

CASES ON THE CONSTITUTION

1. *In re* P.C., an Arranging Debtor. (1939) I.R. 306.
2. The Pigs Marketing Board *v.* Donnelly (Dublin) Limited. (1939) I.R. 413.
3. Lewis *v.* Lewis. (1940) I.R. (Hanna J.) 42.
4. The State (Bourke) *v.* Lemon & Attorney General. (1940) I.R. (Gavan Duffy J.) 136. (Supreme Court) 157.

5. The People (at the suit of the Attorney General) *v.* James Fennell (No. 2). (1940) I.R. (50) 453.
6. In the matter of Article 26 of the Constitution and in the matter of the Offences Against the State (Amendment) Bill, 1940. (1940) I.R. 470.
7. *In re* McGrath & Harte and in the Matter of the Constitution. (1941) I.R. (Gavan Duffy J.) 68. (Supreme Court) 74.
8. *In re* MacCurtin and in the Matter of the Constitution. (1941) I.R. (Gavan Duffy J.) 83. (Supreme Court) 88.
9. State (Walsh and Others) *v.* Lennon and Others. (1942) I.R. (High Court) 112. (Supreme Court) 124.
10. In the Matter of Article 26 of the Constitution and in the Matter of the School Attendance Bill, 1942. (1943) I.R. 334.
11. In the Matter of Gay Kindersley, an Infant, and in the Matter of the Courts of Justice Act, 1924, and in the Matter of the Constitution. (1947) I.R. (Gavan Duffy J.) 111.
    (Supreme Court) 120.
    (Gavan Duffy J.) 133.
    (Supreme Court) 137.
12. Cork County Council and Richard Burke *v.* Commissioners of Public Works in Ireland, the Minister for Finance and the Attorney General. (1945) I.R. 561.
13. National Union of Railwaymen and Others *v.* Sullivan and Others. (1947) I.R. (Gavan Duffy J.) 77 and
    (Supreme Court) 91.
14. *In re* Frost, Infants (1947) I.R. 3.
15. Fisher *v.* Irish Land Commission and Attorney General. (1948) I.R. (Gavan Duffy J.) 3 and
    (Supreme Court) 19.
16. Buckley & Others (Sinn Féin) *v.* Attorney General and Another. (1950) I.R. (Gavan Duffy J.) 67,
    (Supreme Court) 71.
17. In the Matter of Philip Clarke and in the Matter of the Constitution. (1950), I.R. 235.
18. Crowley *v.* Irish Land Commission (1951), I.R. 250.
19. In the Matter of Tilson, infants (1951), I.R. 1.
20. The State (Duggan) *v.* Tapley (1952), I.R. 26.
21. Foley *v.* Irish Land Commission (1952), I.R. 118.

EDITOR'S NOTE—This lecture which was delivered on 29th October, 1946, has kindly been brought up to date to the end of 1952 by the lecturer.

Administrative Tribunals

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INTRODUCTION

Our Constitution recognises and, indeed, prescribes, the distribution of political, or governmental, power into three fundamentally different categories. " All powers of government, legislative, executive and judicial, derive, under God, from the people . . ." (Art. 6, 1). Furthermore, it indicates that, in general, those several functions are to be exercised by different agencies. " These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution." The legislative, or law-making, power is entrusted to the Oireachtas. " 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." The only constitutional exceptions to this are the power given to create or recognise subordinate legislatures and to provide for their powers and functions and the provision for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people.

The executive power of the State, for carrying the laws into effect, is entrusted to the Government (Art. 28, 2). Finally, the judicial, or justice-dispensing power, is entrusted to the Courts. "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" (Art. 34, 1). The Courts comprise Courts of First Instance and a Court of Final Appeal. The Courts of First Instance include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or

criminal. They include Courts of local and limited jurisdiction with a right of appeal as determined by law (Art. 34, 2. 3).

To the student of political science the distribution of functions might seem at this point to be complete. The great organs of State have been established; their spheres have been assigned. Subordinate agencies have been provided for, to attend, in the first instance, to matters of local or limited importance on their authority and subject to their control.

The conditions of their harmonious relationship have been defined. The result to be expected is aptly expressed by Blackstone: "Like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either, acting by itself would have done; but at the same time a direction partaking of each, and formed out of all; a direction which constitutes the true line of liberty and happiness of the community." They combine to serve the people "whose right it is," as the Constitution (Art. 6) puts it, "to designate the rulers of the State, in final appeal, to decide all questions of national policy according to the requirements of the common good." That is the principle of Irish democratic government in a nutshell.

But "it is one thing to put it in a nutshell; it is another thing to keep it there."[1]

The social revolution of our times has resulted in the creation of a great number of new duties and obligations of a kind unknown before—duties of the citizen towards the State and the State towards the citizen—expressed in a great body of complex statute-law, and resulting in the creation of an ever-growing executive machine to carry them into effect.

This development has resulted, on the one hand, in the delegation by the legislature of law-making powers to the executive, and, on the other hand, in the conferring of judicial functions either directly upon the executive or, indirectly, upon agencies responsible to it or under its

[1] Lord Macnaghten in *Van Grutten* v. *Foxwell* (1897) A.C. at p. 671.

control. This body of legislation, original and delegated, we term administrative law. The agencies which it establishes for the determination of issues arising in its administration we term administrative tribunals.

The setting-up of departmental tribunals or tribunals whose members are ministerially appointed is a modern development of rapid growth. Formerly, the legislature left to the ordinary Courts of law the task of vindicating the rights and enforcing the duties which it created. But in the great majority of cases to-day this task is assigned to administrative tribunals.

The nature and procedure of these tribunals, their constitutional validity and the degree and effectiveness of judicial control over them form the subject of this paper.

Constitutional Basis

The term " administrative tribunal " is not to be found in our Constitution and a reader of the Constitution, unfamiliar with the facts of Irish life, would be ill-prepared from his study for the multiplicity and importance of such agencies in our law. The system is, nonetheless, sanctioned by the Constitution, Article 37 of which provides: " 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." It is on this Article that the constitutional justification of such tribunals rests.

The Minister for Finance deciding under the Superannuation Acts the question whether a retired State servant has a right to a pension out of public funds acts under this authority. So, too, does the Censorship of Publications Board in deciding whether to prohibit the distribution of a book on the ground of indecency; a public assistance authority in determining a claim for assistance;

an official of the Department of Social Welfare, known as a "deciding officer," in ruling upon claims for benefit under the Social Welfare Acts; the arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919, in determining claims for compensation on the compulsory acquisition of land under various statutory provisions.

Judicial and Administrative Functions

Despite the simple logic of the Constitution it is by no means easy nor, indeed, is it always possible to determine clearly whether a particular statutory function is judicial or administrative. It may well be partly both. The distinction is an important one because it is only in regard to judicial or quasi-judicial functions that the courts will exercise any measure of control. The difficulty arises in cases where a discretion is given. The question then arises whether the discretion may be exercised arbitrarily (by which I do not mean irresponsibly) in such manner as may best serve government policy or whether it must be decided on principle and solely to serve the ends of justice. To put it another way, did the legislature intend to confer a legal right or not?

A good example of the difficulty is the licensing jurisdiction conferred on the courts by various statutes. Under the Public Dance Halls Act, 1935, any person desiring to use a place for public dancing must apply to the District Court for a licence and the Act provides that the justice "may, if he so thinks proper, grant such licence to such person." In considering the application the justice is directed to have regard to a great many matters including the character of the applicant and his financial circumstances, the existing facilities, the suitability of the place and the probable age of persons likely to use it, but he may also have regard "to any other matter which may appear to him to be relevant." In granting a licence "he may insert therein such conditions and restrictions as he shall think proper."

There is an appeal from his decision to the Circuit Court.

Here we have an instance of a court proceeding judicially but ultimately exercising a function of public administration. The decision of the court does not involve the determination of a legal right.

The Land Commission has many diverse functions which it is difficult to classify. For example, section 39 of the Land Act, 1939, gives power to the Commission to re-possess holdings vested under the Land Purchase Acts for various purposes, including the relief of congestion and the sweepingly general one of " increasing the food supply of the country." This section provides an elaborate procedure which must be followed. Notice of the proposal must in the first place be given to the occupier. He is given a limited time within which to present a petition that the holding should not be resumed without further inquiry. The petition is then considered by the Lay Commissioners who are senior officials of the Land Commission and the decision of those Commissioners is final, subject only to an appeal to the Appeal Tribunal on a matter of law. The Appeal Tribunal consists of the Judicial Commissioner (a Judge of the High Court) as chairman, and two lay Commissioners (other than those who have heard the petition in the first instance). If the petition is refused the Appeal Tribunal is directed by the statute to authorise the resumption of the holding. It has been held by the Supreme Court[1] that this inquiry is of a purely administrative character and does not involve the determination of any question of legal right. The Lay Commissioners and the Appeal Tribunal while bound to act judicially are not exercising judicial power.

Lynham v. *Butler* (No. 2)[2] is an interesting decision of the Supreme Court under the previous Constitution on the question whether certain powers conferred on the Land Commission by the Land Act, 1923, are judicial or administrative. It was held there that the duties imposed by section 40 of that Act relating to the ascertaining of the lands to be vested in the Land Commission under the Act were purely administrative.

[1] *Fisher* v. *Irish Land Commission*, [1948] I.R. 3; 82 I.L.T.R. 50.
[2] [1933] I.R. 74, 80.

Classification of Administrative Tribunals

The number of tribunals exercising judicial functions is legion and, as their establishment has been upon a purely empirical basis, it is impossible to explain their composition, procedure or powers upon any consistent principle. However, to produce order out of chaos, some form of classification must be adopted. The most convenient one is, I think, that of C. K. Allen[1] :—

(1) Ministers exercising original functions.
(2) Ministers exercising appellate functions.
(3) Ministerial tribunals.
(4) Other tribunals.

Original Jurisdiction of Ministers

Ministers have many important powers of decision with far-reaching consequences for the citizen; some of these are merely judicial functions while others, though involving preliminary judicial process, are ultimately administrative. Examples of judicial functions are : (1) the power of the Minister for Finance under the Superannuation Acts, the Tourist Traffic Act, 1952, and other statutes to decide on the pension claims of civil servants and officers of State boards, a power which is expressed to be final; (2) the power given to the Minister for Local Government to decide an appeal by the officer of a local authority against a surcharge made upon him by the Department's auditor; (3) the power of the Minister for Defence under the Military Services Pensions Act, 1924, to determine applications for military service pensions. Section 4 of that Act provides that the Minister with the sanction of the Minister for Finance *may* grant to any person to whom a certificate of military service had been given a military service pension on his discharge from the Forces. It was held by the High Court in an action against the Ministers that the plaintiff had a statutory right to a pension and was entitled to a declaration that the Minister was bound to grant it at the proper rate with the sanction of the Minister for

[1] *Law and Orders.* (Stevens & Sons, Ltd., 1945), pp. 73 *et seq.*

Finance, which sanction might not be arbitrarily or capriciously withheld or for any reason other than inaccuracy or wrongful calculation under the Act.[1]

Functions given to a Minister are not, as a rule, exercised by him personally. While the final decision is taken upon his responsibility and should, as a matter of law, be the result of the exercise of his personal judgment, the enquiry into the facts and the application of the law to them, that is to say, the judicial process is the work of officers of his Department. Sometimes, the process is a formal one, taking the form of a public local enquiry conducted by an official with legal or technical qualifications. This is the procedure prescribed by the Housing Acts and Labourers Acts as a preliminary to the making of slum clearance orders, and by the Local Government Act, 1941, on a proposal for the dismissal of an officer of a local authority.

All parties may be represented by counsel, evidence is taken on oath and the procedure is, so far as it goes, more or less the same as a court of justice. There is one essential difference—no decision is pronounced. The inspector is not the judge. His function is to keep order, to cause the evidence to be taken down and to report upon the proceedings to the Minister. The report is not made known to the parties though it may be examined, criticised and dissected by the various sections of the Department interested. Finally, its findings do not bind the Minister.

Where no formal procedure is prescribed, the facts are ascertained by officers of the Department as best they can. Memoranda may be submitted by the parties, inspectors may separately interview them, technical officers will add their own observations. The results will be collated and considered by the administrative staff and a decision will finally be advised by an assistant secretary or, if the matter be of unusual importance, by the Secretary himself.

Appellate Functions of Ministers

Under the Industrial and Commercial Property (Protection) Act, 1927, there is a right of appeal to the Minister

[1] *Conroy* v. *Minister for Defence*, [1934] I.R. 342; 69 I.L.T.R. 43.

for Industry and Commerce from a decision of the Controller refusing the registration of a trade mark in Part A of the register (s. 85). The Minister may, if he thinks fit, refer the appeal to the High Court in lieu of deciding it himself (s. 140). Alternatively, he may delegate the duty to a secretary, or assistant secretary of his Department or to any other authorised person (s. 141). The tribunal is required to hear the applicant and the controller (s. 85). The decision of the Minister, or tribunal, is final (s. 140).

Under the Health Act, 1947, an appeal lies to the Minister for Health against the refusal of a health authority to provide for the maintenance of a person suffering from an infectious disease who is either undergoing treatment or under compulsory detention on the orders of a local medical officer or otherwise prohibited from earning his livelihood. No procedure is prescribed and in fact the matter is dealt with departmentally. The decision of the Minister is final.

Under the Milk and Dairies Act, 1935, any person proposing to carry on the business of dairyman must apply to the sanitary authority to be registered. The sanitary authority are empowered to refuse registration if satisfied that he is not a fit and proper person to carry on such business or that the premises are not suitable. Every refusal order must state the grounds upon which it is made. An appeal lies to the Minister for Health against a refusal order.

The Minister, " after considering the matter," is required as he thinks proper, either to reverse the order, confirm it or confirm it with modifications.

Ministerial Tribunals

Claims under such State schemes of insurance of public relief as the National Health Insurance, Unemployment Insurance, intermittent unemployment insurance or wet time, widows' and orphans' pensions, old age and blind pensions have until recently been decided by several hierarchies of local and departmental officers authorised under the various Acts. Almost all of this bewildering

array has however, been superseded by the Social Welfare Act, 1952 (ss. 41–46). This statute sets up in their place one co-ordinated scheme of administrative tribunals. Every question arising under the Act in relation to benefit or whether a particular employment is insurable is decided in the first place by a deciding officer who is a designated official of the Department of Social Welfare. An appeal lies to an appeals officer appointed by the Minister and holding office at pleasure. One of these officers is designated as Chief Appeals Officer. The Chief Appeals Officer is responsible for the distribution amongst the appeals officers of references to them, and for the prompt consideration of such references. The appeals officer has power to take evidence on oath, to require persons to give evidence and to produce documents. He has also power to award to any person costs and expenses including loss of earnings and the award must be paid by the Minister. The Minister may appoint assessors to sit with the appeals officers whenever he considers such assistance necessary. A deciding officer may at any time revise any previous decision of a deciding officer if it appears to him to have been erroneous in the light of new evidence or by reason of some mistake with respect to the law or the facts or if there has been a change of circumstances since the decision was given. In similar cases an appeals officer is also entitled to revise a previous decision. Finally the Chief Appeals Officer is given power to revise existing decisions where it appears to him that a mistake has been made in law or the facts.

An appeal lies to the High Court from the decision of an appeals officer on any question of law except where the case relates to a claim for benefit or as to whether a person is disqualified for benefit. In such cases it is apparently thought that no question of law is likely to arise. Regulations under the Act, prescribing the procedure to be followed, provide that an appellant may appear in person or by a member of his family or, by leave of the appeals officer, by any other person.[1] Power is given by various

[1] Social Welfare (Insurance Appeals) Regulations, 1952 (S.I. No. 376 of 1952).

sections of the Act to apply this appeals system either with or without modification to widows and orphans and old age pensions and unemployment assistance and regulations to this effect have recently been made.[1]

Other Tribunals

Many tribunals, not directly connected with any Minister or Department, have been set up by statute in permanent form, so that they may almost be referred to as administrative courts.

Special Commissioner of Income Tax

A good example is the Special Commissioner of Income Tax. He hears appeals against assessments. He conducts oral hearings at which the Inspector of Taxes and the taxpayer and his legal representative or accountant are present. The proceedings, though informal, have all the characteristics of a court hearing. An appeal lies to the Circuit Court which re-hears the case, and either the Commissioner or the Circuit Court may state a case for the opinion of the High Court on any point of law. An appeal on a case stated lies to the Supreme Court.

Commissioner of Valuation

The Commissioner of Valuation has the judicial function of determining the valuation of premises for rating purposes. Here again there is an appeal by way of re-hearing to the Circuit Court.

E.S.B. Tribunal

Under the Electricity Supply Board (Superannuation) Act, 1942 (s. 9), there is a standing tribunal for the determination of disputes between the Board and its manual workers. The tribunal consists of a chairman and two ordinary members. One of the ordinary members is appointed by the Board, the other elected by its employees. The chairman is appointed by the Minister on the joint

[1] Claims for old age and blind pensions are, however, still decided in the first instance by a local pensions committee.

nomination of the two ordinary members. The tribunal has power to regulate its own proceedings and to take evidence on oath. It also has powers for enforcing the attendance of witnesses and the production of documents and its decision is final.

Military Service Pensions Referee

Under the Military Service Pensions Act, 1934, a Referee is appointed by the Government to decide claims under the Act. He must be a practising barrister of at least 10 years' standing or a judge of one of the courts. He holds office at the pleasure of the Minister. He also has power to take evidence on oath and to enforce the attendance of witnesses and the production of documents. An advisory committee is appointed to sit with him and assist him in the exercise of his functions. The Act provides that the findings of the Referee as set out in his report "shall be final and conclusive and binding on all persons and tribunals whatsoever."

Land Commission

Where the Lay Commissioners of the Land Commission are given judicial functions an appeal lies to an Appeal Tribunal. The appeal Tribunal, as already mentioned, comprises a Judge of the High Court as chairman and two Lay Commissioners. The opinion of the Judge prevails on matters of law. The question as to whether a particular issue is one of law is decided by a majority vote ; in other words, if the two Lay Commissioners agree that the question is not one of law they can over-rule the High Court Judge (Land Act, 1933, s. 7 (5)). On the other hand, if the majority agree that the question is one of law the opinion of the Judge prevails on that particular issue. An appeal from the decision of the Appeal Tribunal lies to the Supreme Court.

Railway Arbitrator

Under the Transport Act, 1950, claims agains C.I.E. for compensation for dismissal on the termination of railway services are decided by the Standing Arbitrator appointed by the Chief Justice. He has power to summon witnesses

and examine them on oath, to require the production of documents and to award costs. His decision is final on any question of fact but he may at any stage of the proceedings state a case for the opinion of the High Court on any question of law.

Controller of Industrial and Commercial Property

The Controller of Industrial and Commercial Property, appointed by the Government under the Industrial and Commercial Property (Protection) Act, 1927 (s. 6), has many judicial functions. In some cases there is an appeal to the High Court : for example, from a decision of the controller to revoke a patent (s. 42). In some cases, the appeal is to the Attorney General, as in the case of a decision of the controller on an opposed application for the grant of a patent (s. 24). In yet other cases, the appeal is to the Minister for Industry and Commerce ; for example, against the refusal to register a trade mark (s. 85).

Summary

The structure and procedure of administrative tribunals exhibit, as this brief review indicates, no uniformity of plan. In only one respect are they consistent : save in the case of the Special Commissioner of Income Tax and one or two others there is no appeal to a Court of law on any question of fact. In many cases the statute purports to exclude the jurisdiction of the courts even on questions of law. In others a right of appeal, usually by way of case stated, is given to the High Court on such questions. In some cases a formal hearing is prescribed and the procedure resembles that of a court, the tribunal being given power to summon witnesses and examine them on oath and to call for the production of documents. In such cases the witness is entitled to the same immunity and privileges as a witness before the High Court. In other cases the question whether or not there shall be an oral hearing is left to the discretion of the tribunal itself and the tribunal has no power to enforce the production of evidence or the administration of an oath.

In yet another class of case an oral hearing is prescribed, but it is conducted, not by the person ultimately called upon to decide the issue, but by one of his officers. In some instances, the citizen is entitled to be represented by a professional adviser; in most cases, however, he has no such right.

REVIEW BY THE COURTS

We have now to consider the jurisdiction of the Courts over administrative tribunals, particularly in those cases where the statute purports to make the tribunal's decision final. The law on the subject may conveniently be summarised as follows :—

(1) No law, whatever its terms, can prohibit the High Court from reviewing the exercise by an inferior tribunal of a judicial function.[1]

(2) Where the statute provides that the decision of the tribunal is to be final the first question is whether the function given to the Tribunal is a limited one within the meaning of Article 37 of the Constitution.

(3) If it is, the Court will not interfere with the decision even if satisfied that it is erroneous in fact or in law. As Mr. Justice Murnaghan said in Dillon's case[2] " In my opinion the legislature, in selecting the Local Government Board as the tribunal, gave to this tribunal the exclusive jurisdiction over all matters necessary to found a claim for superannuation, and as no appeal was given at the same time by the legislature determinations of law and findings of fact, however erroneous, cannot be reviewed by the Court."

(4) The Court will intervene only if the tribunal has either not duly tried the case or has not observed statutory procedure or has offended against natural justice or acted in excess of its jurisdiction.
Mr. Justice Hanna in Walsh's case[3] said : " If the order and subject matter is within the jurisdiction of

[1] See Constitution, Art. 34.
[2] *R. (Dillon)* v. *Minister for Local Government*, [1927] I.R. 474.
[3] *Walsh* v. *Minister for Local Government*, [1925] I.R. 377.

the tribunal it cannot be reviewed by the Court on any ground. . . . It is the duty of the Court to scan with exactness the departmental and other orders made by bodies or persons given by statute a power to deal with the rights of individuals or to impose obligations upon them. In my judgment the Court should ever be diligent to see that such tribunals keep within the strict limits of their statutory jurisdiction and that the Court should not, save by the clearest language, be deprived of their powers of final adjudication upon all matters."

(5) A discretionary order will not be interferred with unless it is contrary to law or involves a miscarriage of justice.[1]

Mandamus, Prohibition and Certiorari

The control of the Court over administrative tribunals is exercised by means of what were formerly prerogative writs now made in the form of Court Orders. They are mandamus, prohibition and certiorari.

Where any official or public authority is under a duty to perform a certain function and refuses to do so any person who has a direct interest in its performance may apply to the High Court for an order of mandamus to compel him to fulfil the duty.

Prohibition is an order of the High Court directed to an inferior court or tribunal for the purpose of preventing it from usurping a jurisdiction not legally vested in it. Its purpose, therefore, is to compel courts and other bodies entrusted with judicial functions to keep within the limits of their jurisdiction.

Certiorari is an order of the High Court addressed to an inferior court or tribunal directing it to transmit the record of the proceedings of which complaint is made to the High Court. Its object is to enable the Court to scrutinise the proceedings for the purpose of determining whether the tribunal has acted in excess of its jurisdiction. If it has, the proceedings and order of the tribunal are quashed.

[1] *Domville Estate.* [1930] I.R. 640.

A good example of the extent of certiorari is provided by the case of *the State (McCarthy)* v. *O'Donnell and the Minister for Defence.*[1] This was an application for an order of certiorari to quash the report of the Referee under the Military Service Pensions Act, 1934, and for mandamus to compel him to hear and determine the appellant's application. The principal grounds relied on were that the report and the findings upon which it was based were not made in accordance with the Act and were made in disregard of the essentials of justice and without jurisdiction. The evidence in the case disclosed considerable informality in the proceedings before the tribunal. When the oath was administered by the Referee to the appellant, the latter was taken to another room where he was examined orally by an officer attached to the Referee's office. A transcript of the examination was subsequently forwarded to the Referee and to the advisory committee. Later some of the members of the advisory committee heard evidence apart from the Referee. These members then advised the Referee that the appellant's military service had not been continuous during certain vital periods. On this evidence and advice the Referee found that the appellant was not a person to whom the Act applied. It was held by the Supreme Court that the application had been dealt with in a manner which was not authorised by the Act and that the report was invalid. It was also held that the provision of the Act which declared that the report should be " final and conclusive and binding on all persons and tribunals whatsoever " did not take away the appellant's right to certiorari, since the Referee acted in excess of jurisdiction. They found that the evidence of the appellant and of other witnesses should have been taken by the Referee or in his presence.

Following the decision an amending Act—Military Service Pensions Act, 1945—was passed by the Oireachtas, rendering valid the procedure which had been adopted by the Referee. The Act was made retrospective so as to apply to cases which had already been decided by the

[1] [1945] I.R. 126.

High Court and prescribed that in any such case the Minister might appeal to the Supreme Court against any order of certiorari already granted by the High Court. Following on this it was held by the Supreme Court in O'Shea's case[1] that the amending Act had reversed the legal position and that since the provisions of the Act must be deemed to have existed at the time of the High Court hearing the procedure adopted by the Referee must be held to have been legal. Accordingly the order of the High Court was reversed.

Justification of Administrative Tribunals

Administrative tribunals are justified or defended on various grounds.

(1) " Certain types of question are not so suitable for decision by courts of law as by a different type of tribunal. A court of law must necessarily be guided by precedent. Its functions are first to ascertain the facts and then to apply the law to the facts as ascertained. In applying the law it must be guided by previous decisions. If it does not do this the law becomes chaotic. The whole tradition and practice of legal administration makes it extremely difficult for the judges to administer a law by which the tribunal is to grant or withhold rights according as they think it just or reasonable to do so. Without desiring to lay down any definite rule I would venture to state as a general proposition that questions which involve the conferring of rights or the taking away of rights on the basis of what a tribunal thinks is reasonable on the facts of the individual case are not in general suitable for decision by a court of law. It is particularly in the sphere of social legislation that this distinction appears to me to be important."[2]

(2) The procedure of the law-courts is said to be expensive

[1] *The State (O'Shea)* v. *O'Donnell and the Minister for Defence*, [1947] I.R. 49.

[2] Lord Greene, Lord of Appeal in Ordinary: *Law and Progress*, p. 20 (Haldane Memorial Lecture, 1944), quoted by Fitzgerald: "*Safeguards in the Exercise of Functions by Administrative Bodies*" (Canadian Bar Review, Vol. XXVIII, No. 5, 1950, p. 533).

and slow, whereas the procedure of Departments or administrative tribunals is cheap and speedy. There is merit in the argument, for it is certainly true that a prolonged legal contest by a citizen against all the resources of the State is a formidable and, often, prohibitive prospect, particularly as proceedings first heard by a Special Commissioner of Income Tax or a District Justice may find their way up to the Supreme Court on a point of law.

"Nevertheless," as C. K. Allen points out[1] "the arguments of speed and economy can be greatly exaggerated. It is not the fact that administrative decisions are always given with expedition; on the contrary, many of them show a leisureliness worse than the law's delays. Anybody who has ever had official correspondence with a Department knows the enormous time which may be consumed before a communication filters through the various 'channels' and then awaits its turn, with innumerable other matters, for a reply. What would be hours or days in ordinary correspondence must be translated into weeks and months; and there is no means known to man of expediting the process, however urgent the matter may be to the individual or to the public. Not even the stress of war has succeeded in accelerating it, and the country is full of people, with urgent tasks to perform, wringing their hands because they cannot get a decision from this authority or that, or from a succession of them. Ministerial decisions which may affect the bare existence of poor persons are not free from this timelessness."

(3) A third reason advanced is that the number of issues that arise in the course of public administration is so enormous that the number of judges and courts would need to be multiplied very many times to deal with them and that the interests of public economy, therefore, require the conferring upon civil servants, local officials and other persons and bodies of judicial

[1] *Op cit.*, p. 152.

or quasi-judicial functions. It is certainly true that in a great many minor matters specially authorised persons or tribunals can discharge their task as well as, if not better than, the courts. It would, indeed, place an impossible burden on the courts to have to deal with applications for public assistance or unemployment insurance. Many thousands of cases arise yearly under the Social Welfare Act, 1952.

(4) It is also said that many questions in issue require technical knowledge and, in this field, that special tribunals have an advantage. This is true in the sense that the technical tribunal is initially better informed and that the time and expense involved in, as it were, instructing the court upon the subject by adducing expert evidence may be disproportionate to the importance of the issue. On the other hand, technical knowledge and the judicial faculty do not necessarily go together, nor are experts always agreed in their opinions. If the expert and the judge are one, the quality of justice may suffer.

Dangers and Safeguards

One may sum the matter up by saying that administrative tribunals are in themselves by no means undesirable institutions. They are, in fact, an essential concomitant of the modern State, but there are certain dangers inherent in their use which make it essential that there should be adequate safeguards for the individual. In so far as matters are assigned to them which are judicial in character they represent an invasion by the executive of the functions of the courts.

They are usually inferior to Courts of law in fact-finding and the examination of evidence; they do not always possess powers to compel the production of documents or attendance of witnesses; they generally lack a body of reported precedents to guide them, and often, by not admitting trained lawyers to represent the parties, they deny themselves the advantage of a proper presentation of the issue.

The chief danger lies in the fact that the executive, which in one form or another is a party to the dispute, is also the judge. The impartiality of the courts is assured by the Constitution. Judges are protected in their independence by a constitutionally guaranteed security of tenure, their remuneration is a charge on the Central Fund and is, therefore, independent of the fate of the Budget or even of the Government and it may not be reduced during the Judge's term of office.

Persons performing judicial functions in the course of public administration have no such security. Usually they are civil servants of subordinate rank. Sometimes they are appointed for the purpose of a particular inquiry only. Even the members of statutory boards are appointed as a rule for terms of office not exceeding five years.

Let us finally consider what safeguards are required if these tribunals are to serve the ends of justice.

(1) Judicial functions should be entrusted to a Court unless there is good reason for departing from this rule.

(2) The tribunal should be independent of the Minister responsible for the administration of the statute, particularly where departmental interest is involved.

(3) Where there is a disputed question of fact each party should be given a full opportunity of stating his own case and of hearing and replying to the case made by the other party. This will usually involve an oral hearing which may, of course, be confined to the net issue in dispute. The person conducting the hearing should have the power to require evidence to be given on oath and to compel the production of documents.

(4) Each party should be entitled to be represented by counsel, solicitor or other expert agent.

(5) The decision of the tribunal and the reasons for it should be stated in writing and communicated to each party.

(6) There should always be a right of appeal to a court on questions of law.

Organisation of Government Departments

By W. MAGUIRE, B.L.
FORMERLY SECRETARY, DEPARTMENT OF SOCIAL WELFARE

I have been asked to address you on the subject of the Organisation of Government Departments and I will do so in necessarily general terms, since I wish to avoid as far as possible a limitation of these remarks which would make them applicable rather to a particular Department of State than to the general question. I should perhaps make it clear in the first instance that the Head of a Department is the Minister responsible for it, who has to answer to the Dáil for its activities, and also for the inactivity at times alleged against it. In the sense of this responsibility of the Minister for his Department it is sometimes said, and really with little exaggeration, that the Department and its staff have no official separate existence apart from their Minister. The phrase " I am directed by the Minister for so and so," appearing so frequently in letters from Government Departments is less a mere form of words than is often thought, since the letter, if it does not convey the Minister's actual decision or opinion in the specific case —as it very often does—will be covered by some more general decisions or opinions of his in similar circumstances, or by their clear implications, and the signatory of the letter is but the mouthpiece of the Minister who carries the responsibility in the Dáil for the letter. It should be appreciated of course that, while this Ministerial responsibility for the conduct of a Government Department is far-reaching, some officers or authorities in the Government service hold appointments set up for statutory purposes and have certain powers conferred on them by the appropriate Statute. Within the area covered by those powers the Ministerial responsibility I have described is curtailed.

The Five Main Grades of the Civil Service

The principal Government Departments are staffed by five main grades and persons promoted from those grades. They are spoken of as " general service " grades to distinguish them from certain " Departmental " grades which are recruited for special Departments and generally serve only in those special Departments. The general service grades are :—Administrative, Executive, Clerical, Writing Assistant and Shorthand Typist and Typist.

The Administrative Grade is concerned with the formation of policy, the co-ordination of Government machinery and the general control and administration of Government Departments. The Executive Grade is concerned with the blocks of work of the supply and accounting Departments, the decision of cases of lesser importance not clearly within the scope of regulations or instructions, drafting of letters and memoranda, and generally, work involving judgment, initiative and resource. The Clerical Grade is concerned with the simpler clerical duties, the decision of cases in accordance with clearly defined regulations or instructions, the preparation of material for returns and statements, preparing précis of material for decisions, the drafting of simple letters, checking and cross-checking accounts. The Writing Assistant Grade is concerned with the simplest clerical work, filing, filling forms, converging decisions, preparing warrants, etc. The work of the Shorthand Typist and Typist Grade needs no elaboration.

All these grades are recruited for the service generally by the Civil Service Commissioners. They are paid the same salaries in whatever Department they serve, are liable to serve in any Department in which members of the grade are employed and to be transferred from one Department to another. The Civil Service Examinations for Shorthand Typists and Typists test the Candidate's efficiency in these subjects. In the other grades the test is a general one, calling for recognised standards of education depending on the grade in question. The members of these other grades learn their work on the job, so to speak, as apprentices do. They have to serve a period of probation in each case

during which they must give evidence of their capacity to discharge efficiently the duties of their grades and must satisfy their Department as to their conduct, discipline, punctuality, etc. A new idea is developing that greater efficiency would be secured by the establishment of initial courses of training carried out apart from the work, with suitable refresher courses later.

The Higher Civil Service Posts

The higher posts in a Department consist of Secretary, Assistant Secretary, Principal, Assistant Principal, Higher Executive and Staff Officers, of which last there is more than one grade. Posts of Deputy Secretary and Deputy Assistant Secretary occur in some instances, but they are not standard practice. The clerical grade's normal line of promotion is to a Staff Officer post, the Executive's to Higher Executive and the Administrative to Assistant Principal, but on merit and experience promotion is open further to higher posts in each case. The avenues of promotion just mentioned represent the first step up the ladder and out of the original grade of entry.

The Administrative Framework of a Department

It may now be easier to describe the general set up of a Department. There is first of all the Minister as head of the Department and if it is a large Department there may be a Parliamentary Secretary. Both are of course Deputies of Dáil Éireann. The Minister and Parliamentary Secretary, if there be one, will each have a Private Secretary and a small clerical and typing staff to run their own offices. Next there will be the Secretary of the Department with a Private Secretary and typing staff for his office, while below him will be Assistant Secretaries, the number depending on the size and complexity of the work of the Department. These considerations will of course determine also the numbers of the other grades who will be employed in the Department and their allocation to Branches and Sections.

Without considering the case of a specific Department

and so knowing the precise character of the work, it is of course impossible to say how many branches or sections there would need to be on the administrative or executive side of the Department or in what proportions it would be appropriate to appoint staffs of the several grades. It may be assumed, however, that in a major Department there will be two or more Assistant Secretaries each of them responsible for the work of two or possibly three Principals and so down the line. Apart from the administrative or executive side of the Department there will be certain common service sections—Finance Establishment, Technical, Inspection. Possibly the work of the Department may require the existence of local offices but I do not propose to complicate matters by pursuing this point further.

Grade Responsibility

As I have already indicated it is not possible without taking a particular Department into consideration to go into detail on the organisation and working of the administrative or executive side of a Department, but it can be said that it is the duty of each grade to carry its full responsibility and to bring to finality all matters within its competence. It is the business of supervisors to see that this result is achieved in practice. Due regard must be had to rulings and decisions in similar cases and it is essential that there be consistency in the action taken where the circumstances of the cases are similar. In the business world it is possible to take decisions which do not necessarily pay much heed to what has happened in another case. The clients of a Government department, however, are entitled to equality of treatment and failure to provide it may lead to Dáil questions which may place the Minister in an awkward position. It is to this difference between private and public business must be attributed the regard which the Civil Servant rightly holds for precedent. An exaggerated regard for it is frequently attributed to the Civil Service, but it is permissible to wonder whether the importance of this equality of treatment is fully appreciated outside the Public Service.

Lest it be assumed that the stopping of work at various levels results in little reaching the top, it may be said at once that like most over-simplifications the idea is quite wrong. In fact it is generally admitted that the higher staffs of the Departments are a good deal the more heavily burdened. Certain matters for technical reasons must go to the Minister and consequently reach the Secretary; then there are matters which though not themselves essentially difficult or even of serious importance, are yet of such a character that the heads of the Department should be aware of them. Other matters reaching the Secretary have been considered by an Assistant Secretary and other Senior Officers and may therefore be assumed to be difficult or troublesome or of such importance that it is considered desirable to have the agreement of the Secretary or the Minister in the line of action recommended. The volume of business reaching the higher levels is manifestly reduced of course but the heavier responsibility attaches by virtue of the difficulty and complexity of what reaches those levels.

The Official Hierarchy

It should not be assumed that the hierarchy of rank represents a hard and fast system which cannot be departed from. A junior officer may not, as it were, ignore his immediate senior officer in favour of a direct approach to a higher official and the latter would not tolerate or encourage such an approach. In the reverse direction, however, a Minister is entitled to call for any officer in the Department and obtain his views on the business in hand. The Secretary and the other senior officers of the Department are entitled to act similarly. By the junior officer concerned keeping his immediate superior aware of the course of such discussion the danger is avoided of action being taken at variance with any decisions reached. I do not wish to suggest that consultation of this kind is so frequent as to break up the general system, but it occurs on occasions. It has certain obvious advantages and its drawbacks or dangers can be combated.

COMMON SERVICES

It is possible to be more precise about the common service sections of a Government Department which have already been mentioned. The Finance Branch is concerned with the examination and payment of claims against the Department, the payment of staff salaries and allowances and generally the book-keeping and accountancy of the Department. This Branch also prepares the annual estimates of the amounts which the Dáil is later asked to vote for the service of the Department. These estimates are prepared in the last months of each year and furnished to the Department of Finance by all Departments. The estimates as approved by the Department of Finance are published early in the following year and, in due course come before the Dáil for the voting of the amounts needed. The debate provides the Minister with an occasion for reviewing the activities of his Department and gives the Deputies generally an opportunity to criticise the administration of the Department and to seek information about matters in which they are interested.

The Establishment branch is concerned with all staff matters of the Department, appointments, promotions, disciplinary action, dismissals and retirements, sick and annual leave. The Branch also deals through the Office of Public Works with office accommodation, heating arrangements, through the Stationery Office with printing and the supply of stationery and office requisites. It also looks after typing, reporting and messenger facilities. It has a general duty, in conjunction with those responsible for the work, to review staffing arrangements so as to ensure that due economy is observed. Recently an Organisation and Methods section is being arranged in Government Departments, working with a central Organisation and Methods section in the Department of Finance. The purpose is that the "O. and M." Section should concern itself more actively with the organisation and the methods of working in the Department so as to assist those responsible for the work with specialised Organisation and Methods information and so secure that the most efficient and

economical methods are applied to the Department's operations. It is expected that these arrangements will result in more extensive use of mechanical and other labour saving devices.

Among the common service sections are included any technical services which a Department finds necessary for its business. These would include staffs with medical, engineering, architectural, legal, or other special qualifications. The organisation is simple and would normally operate through a Chief Medical Adviser, Chief Engineering Adviser, Principal Architect, etc. In the case of legal advice it is not always necessary to have a special adviser for a particular Department and the service may be supplied through the Attorney General's Department or the Chief State Solicitor's Office. In some Departments also there is need for an inspection or investigation service. This may be limited to an organisation for the inspection of local offices of a Department if it has outstationed officers. In that case it is an internal arrangement operating within the Department and dealing with its own staffs. The inspection or investigation section may, however, have a wider scope and be concerned with enquiries for the operation of a means test or with reporting on the activities of organisations with which the Department has a particular concern, e.g. the operations or proposals of a local authority. It is not possible to be precise as to the organisation of an inspectorate ; much depends on the kind and degree of inspection or investigation to be undertaken.

Appointment to Posts

The appointment of the Secretary of a Department is made by the Government. Other appointments of officers rest with the Minister subject of course to sanction by the Department of Finance as regards numbers and grades. The scales of salary so far as the general service grades are concerned are standard throughout the Civil Service. As already mentioned there are in some cases departmental grades special to a particular Department and with special salary scales approved by the Department of Finance.

These grades generally exist where the work and conditions of Service are of a special character and the general service grading is not considered appropriate.

The Accounting Officer

The Secretary of a Government Department is normally the Accounting Officer. In this capacity it is his responsibility to ensure that the money voted by the Dáil is properly spent for the purpose for which it was voted and that the expenditure is properly vouched. If in his opinion a proposal involving expenditure is of a character which is not in keeping with the purpose of the Vote he is bound to oppose such a proposal and to bring the position clearly to the notice of the Minister. When the Controller and Auditor General has audited the accounts of Government Departments his report is considered by the Public Accounts Committee of the Dáil and the accounting officer is required to appear before the Committee and give any explanations concerning his Department's accounts which the Committee may seek arising out of the Controller and Auditor General's report or on other matters such as differences between the amounts voted by the Dáil which are of course based on the Department's estimates and the actual expenditure for the year.

Summary and General Observations

I hope I have not allowed too much detail to overelaborate and so, perhaps, detract from the clarity of the picture. It might be well to attempt to summarise. At the head of a Government Department is its political head the Minister in charge of it and responsible to the Dáil for its activities. In the case of a large Department there may be a Parliamentary Secretary to the Minister to whom the Government may give Ministerial Powers in regard to part of the work of the Department. In any event the Parliamentary Secretary relieves the Minister of some of the work which would otherwise fall to him. Next comes the Secretary of the Department, who is a Civil Servant, appointed by the Government and, who is also the

Accounting Officer for the Department. Under the Secretary the responsibility for the administrative and executive work of the Department and for the common service sections is divided amongst a number of Assistant Secretaries. Each Assistant Secretary will normally be responsible for two or possible three Principals who again will be responsible for a staff cadre including Assistant Principals, Administrative Officers, Higher Executive Officers, Staff Officers, Executive Officers, Clerical Officers, Writing Assistants and Typing Staffs, the make-up of the cadre depending on the nature and volume of the work of the various sections into which the Department is divided. The Accountant and the Assistant Secretary to whom he reports are the special advisers to the Secretary in matters arising out of his responsibilities as Accounting Officer, and the Establishment Officer and the Assistant Secretary to whom he reports are the Secretary's special advisers in regard to organisation and staff matters which are frequently, almost constantly in a big Department, producing problems which need particular care and attention.

The organisation of our Government Departments is often subject to adverse criticism and I have no doubt it can be improved in detail. The Organisation and Methods section which is now becoming a feature of the Departments will operate in that direction and, indeed, may be counted upon to produce something more than detail improvements. There is already a degree of mechanisation, micro-filming of records, etc. in Government Departments which is not generally recognised and this tendency will spread. The tendency in the past for Departments to regard themselves as separate entities will lessen with the frequent inter-departmental discussions which are now a feature of the Civil Service. It should be possible for a Department which could not make full economic use of certain machinery to serve or assist another Department which has not sufficient of the kind of work to justify the purchase of a separate machine. In this way, or by a central pool of certain machines, there should be opportunities of making adequate use of modern machinery the cost of acquiring

which can only be justified of course by such adequate use. The housing of Departments in adequate and suitable buildings, and this would not prevent a degree of decentralisation of Government Departments if that were decided upon, would be a distinct help to improve organisation and mechanisation. Many Departments suffer at present from having even their headquarters staffs scattered among numerous separate premises, often considerable distances apart. How far it is practicable to remedy this situation and particularly what period of time would be necessary, are matters which are rather beyond the scope of this talk and must be left to another occasion.

Publications on the subject-matter of this talk are naturally limited. The Report of the Brennan Commission on the Civil Service (1932–35) contains a good deal of information though the gradings of work referred to in that Report as from a Reorganisation Report on the British Civil Service of about a dozen years earlier have not been fully accepted here. A Publication entitled *Setting Up a New Government Department* may also be of some interest. It was published in 1949 as *Occasional Papers*, No. 3 by the British Institute of Management. It concerns the formation of the British Ministry of National Insurance and was written by H. V. Rhodes, who was Director of Establishments and Organisation in that Ministry. I should point out, however, that the formation of the British Ministry of National Insurance was complicated by the necessity to set up a considerable number of local offices and take over the Approved Societies which had continued in existence in Britain while in this country the similar societies had earlier been amalgamated into our National Health Insurance Society, which in its turn has been absorbed into the Department of Social Welfare.

The Department of Agriculture

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(Delivered February, 1951)

The Department of Agriculture, one of the Departments of State established by the Ministers and Secretaries Act, 1924, as amended by the Ministers and Secretaries (Amendment) Act, 1928, may be regarded as the lineal successor —at least on the agricultural side—of the former Department of Agriculture and Technical Instruction which was founded just over fifty years ago by the Agriculture and Technical Instruction Act of 1899 following the presentation of a report by a number of public men who formed what was called " The Recess Committee." The Chairman of that Committee was Sir Horace Plunkett and the Hon. Secretary, Mr. T. P. Gill. They later became the first Vice-President (or Minister) and the first Secretary, respectively, of the Department of Agriculture and Technical Instruction. After the change of Government in 1922 various functions formerly exercised by that Department were transferred to other Departments. The Statistics Service was transferred to the Department of Industry and Commerce as were also the Geological Survey and certain functions in relation to transit matters; Technical Instruction to the Department of Education to which were also transferred the Institutions of Science and Art (the Museum, National Library and School of Art). By an Act passed in 1926 the College of Science in Merrion Street and the Albert Agricultural College and farm in Glasnevin were transferred to University College, Dublin.

When I speak of the Department of Agriculture as it exists to-day I do not envisage merely the staff of civil servants in the offices in Merrion Street and the vicinity. I am thinking as well of the officers of the Department

throughout the country, and of the staffs at our various Colleges and Institutions where so much of the vital work is carried on. It would, I think, also be permissible to include—though these staffs are not officers of the Department—the various Instructors in Agriculture, Horticulture and Poultry-keeping and Dairying employed by the County Committees of Agriculture.

County Committees of Agriculture

The County Committees of Agriculture are statutory bodies which are set up by the several County Councils. Although appointed by the County Councils they nevertheless partake of the nature of separate authorities. County Committees of Agriculture have been in existence since the Department of Agriculture was founded about fifty years ago. The statutory basis was continued in the Agriculture Act of 1931 which replaced the Agriculture and Technical Instruction Act of 1899. The County Committees are responsible for the administration in their areas, subject to the approval of the Department of Agriculture, of certain livestock improvement and other schemes. For these purposes they employ Instructors in Agriculture, Horticulture and in Poultry-keeping and Home Butter-making. The Department from the very beginning of its existence has consistently received a very full measure of co-operation from these Instructors in the carrying out of projects of importance to the Department's work. The Committees have separate funds which are derived partly from contributions out of the local rates and partly from payments made from the Department's Vote—the proportions being very roughly half and half.

The Congested Districts

It was recognised, however, that the County Committee organisations with their comparatively limited resources, could hardly be expected to cope adequately with the special problems of the Congested Districts and on that account the Department itself has maintained in those areas a special staff of technical officers for the purpose of advising

and helping the productive efforts of the smallholders of those parts of the country. One of the Department's cares has been to maintain the highest level of production that can be attained in the circumstances of these areas.

This is done by means of special schemes for keeping up the quality of the seeds and the livestock in use in the Congested District and by giving special attention to supplies of necessary fertilisers.

Soil Fertility

Whatever the farmer may be engaged in, whether, for example, he produces tillage crops or cattle, milk for a creamery or for liquid consumption; whether he devotes himself mainly to one particular kind of production or to mixed farming—tillage, cattle, pigs, poultry and other live stock—a fundamental factor for him is the condition of the soil on his farm. If the soil is deficient in the substances which are required for plant life, or if his fields are unduly waterlogged, he is working under a considerable handicap. From the logical angle, therefore, the duties and responsibilities of the Department of Agriculture might be regarded as starting with soil conditions and the production of ordinary crops—wheat, oats, barley, potatoes, roots and so on. The main nutritional requirements of plants are supplied by phosphates, potash and nitrogen, and one of the cares of the Department of Agriculture is to ensure that adequate supplies of manures containing these substances are provided for the farming community. To the extent to which the necessary fertilisers cannot be supplied from home sources the Department takes an active hand in arranging for imports. In addition it seeks to make the supplies of fertilisers available to the farmer at reasonable prices. There is also power vested in the Department to require sellers of certain fertilisers to inform the buyers of the composition of the goods sold. To check the accuracy of such information, samples of fertilisers are taken at intervals by officers of the Department and are analysed in the State Laboratory.

LAND REHABILITATION PROJECT

Drainage of the land—that is field drainage as distinct from arterial drainage—is always a problem in this country on account of our abundant rainfall which, while a great blessing, also carries with it some off-setting disadvantages. For some years the Department operated schemes under which grants were paid to farmers who carried out drainage and other reclamation works such as the clearing of boulders or scrub. Much valuable work was done under these Schemes. These have now, however, been replaced by the much more ambitious Land Rehabilitation Project under which land may be drained and reclaimed either by the farmer himself or by the Department at the request of the farmer. If the occupier does the work himself, he gets a grant to defray part of the cost. If he asks the Department to do it, he is required to contribute towards the cost and this contribution may, if he so wishes, be paid by way of an annuity to be collected with his Land Commission annuity. For the purpose of the Land Project a considerable quantity of machinery of a kind which has never been used before in this country has been provided and put to work. As the cost of these large machines is considerable the Department gives assistance by way of free grants and loans for the purpose of enabling suitable contractors to buy such machinery.

Under the Land Project farmers may also obtain credit for the purchase of fertilisers which are necessary to supply deficiencies in their soil. Here again part of the cost may be repaid in the form of annuities payable to the Land Commission.

In many parts of the country the soil suffers from excess of acidity and this condition is unfavourable to the proper growth of grass and of certain crops. The practice, which is an old one, of burning limestone and spreading the lime so produced on the land in order to neutralise the acidity is still followed, but with the scarcity of fuel for reducing the limestone and the inadequacy of the available kilns it would never be possible by this means to supply in any reasonable time all the lime needed for the large areas

throughout the country in need of this treatment. A new method, therefore, has been devised by which the limestone is finely ground and spread on the land. The Irish Sugar Company has been a pioneer in this development and has engaged not only in the grinding of limestone but also in the carrying of the ground product to the farms and the spreading of it by special spreaders. Many other limestone grinding companies have recently been started with the active encouragement of the Department, which has been devoting close attention to these developments.

Soil Testing

But, one may ask, how is a farmer to know whether his soil is deficient in the necessary nutritional elements or what is the state of its acidity. In order to enable farmers to have precise information on these matters there is a special soil-testing service operated from Johnstown Castle Agricultural College, near Wexford. Any farmer can, through the local Instructor in Agriculture, have samples of the soil in his fields taken and analysed at Johnstown Castle. When the result is available it will indicate to him clearly what the deficiencies are and he can then determine the dressing of fertilisers and lime that are needed in order to correct the deficiencies shown by the analysis. Similarly, the farmer who wishes to participate in the credit scheme for fertilisers under the Land Project has, at a nominal acreage fee, samples of the soil taken from his farm by an officer of the Department who on receipt of the results of the analysis from Johnstown Castle will advise the farmer as to the dressings of fertilisers that are needed.

Farm Improvements

The improvement of the working conditions of the farmer himself and his family is helped by our schemes of grants towards the cost of the concreting of yards and pathways and the installation of running water in the dwelling-house. Anyone familiar with rural conditions knows what a difference amenities of this kind make to the comfort and smooth running of the work of a farm. Many of our farm out-

buildings are either old or inadequate and, as it is impossible to do satisfactory work without proper houses for animals and for the storing of fodder and machinery, a scheme of grants to help towards the cost of the repair or erection of buildings for these purposes is also operated by the Department.

Agricultural Wages

Agricultural workers employed by farmers are entitled by law to receive a minimum rate of wages. Different minima apply in different parts of the country. The minimum rates are fixed by the Agricultural Wages Board which is appointed by the Minister for Agriculture and which consists of a Chairman, representatives of employers and of employees and neutral members. The Board has power to take action to enforce the payment of the minimum rate in cases where the Rates Order is infringed. The Board has a Secretary, a small office staff and some outdoor inspectors. These are officers of the Department who have been assigned for duty with, and work under the direction of the Board. Associated with the Board are a number of Wages Area Committees composed of representatives of employers and employees. These Committees must be consulted before any order fixing rates of wages is made by the Wages Board. More recently employees have become entitled by law to annual holidays with pay. This Act is also administered by the Wages Board.

Loan Schemes

Loans are provided by the Department for the purchase by farmers of farm implements and machinery, poultry equipment such as incubators, and also for the purchase of stallions and premium bulls. Loans for the more expensive kinds of farm machinery, for milking machines and heifers for breeding are provided by the Agricultural Credit Corporation under guarantees from the Department. The Corporation also provides loans for such purposes as the erection of farm silos, purchase of poultry houses, etc. A

noteworthy feature of all these loans is that there are very few defaulters and that the borrowers can generally be relied on to fulfil their obligations fully and promptly.

Seed Testing

A prime necessity for the farmer, if he is to make the most of his land, is a supply of suitable seeds. Here again the Department's functions cover arrangements for the importation of certain seeds as well as for the breeding, propagation and distribution of certain others. The Agricultural Faculty of University College, Dublin, which has its headquarters at the Albert College, Glasnevin, engages in the breeding of wheat, oats, barley and certain grasses. In the Department's own Plant Breeding Station at Ballinacurra, Co. Cork, malting barley is bred and propagated. These processes are somewhat technical and rather longterm in their range. Their aim is to provide a continual flow of pure seed of good quality calculated to give high and remunerative yields. In order to enable farmers and seed merchants to ascertain the purity and germinating qualities of seed, the Department maintains a Seed Testing Station where samples of seed are analysed at moderate fees. This service is availed of to a large extent and many thousands of samples pass through the Seed Testing Station each year.

Samples of seed are taken by officers of the Department at traders' premises from time to time. In cases in which samples are found on being tested to be below standard in purity or germination, the sellers' names and the results of the tests may be published. This publication is sometimes effected by posters displayed in the localities in which the traders do business. This, I might remark, which has of course a statutory basis, is a rather unusual form of sanction given to the Department.

Pests

The adoption of remedies for diseases and the safeguarding of crops against the ravages of destructive insects and pests naturally affect the farmer's yields and are of considerable

importance to him. In these matters the Department of Agriculture disseminates through its own officers and through the Instructors employed by the County Committees of Agriculture information regarding diseases and in addition carries out at its Institutions and Schools investigations and inquiries into methods of pest control. The incidence of attacks by insects, fungi and viruses varies from time to time and from season to season. Some of the more familiar, such as the blight or fungus disease which attacks potatoes, are known to everyone. The advent of potato blight to this country more than a century ago has had indeed most profound consequences of almost world-wide character.

An example of a pest which is causing a good deal of trouble now is the potato eelworm. In order to safeguard the reputation of our seed potatoes on the foreign markets the Department has had to take extraordinary measures to prevent the sale of seed grown on eelworm infested land and in one district we have had to go even to the length of arranging to have other crops such as fruit substituted for potatoes. The enforcement of safeguards against the introduction of new pests is also a responsibility of the Department. One example is the stringent measures which have to be taken against the introduction of the Colorado Beetle which only made its appearance in Europe in comparatively recent years but which is now firmly established in many countries on the Continent. The beetle has succeeded in making its way as far as Great Britain but so far we have been fortunate in keeping it out of this country. Its introduction would have the most serious economic consequences for the country and for that reason plants and shrubs and fruits which are likely to harbour the beetle are not allowed to be imported except under licence, and licences are only given when it is clear that there is no risk of the introduction of the beetle with the imported plant or shrub. Similar restrictive import measures have to be taken by the Department in regard to other diseases affecting trees and fruit bushes. We have statutory authority for the prosecution of persons who allow their land to become infested by noxious weeds which harm not only

the land on which they grow but spread the infestation through the neighbouring lands. The enforcement of this measure which is carried out by the Garda Siochana in consultation with the Department results in a number of prosecutions each year for neglecting to destroy noxious weeds.

Crops

The potato crop is one of the most important that we produce. Contrary to what some people may imagine the successful cultivation of this crop calls for a good deal of attention and the expenditure of much time and labour. It is, therefore, of considerable importance that supplies of seed of good quality should be available. Farmers who engage in the production of seed potatoes and who comply with the directions of the Department in regard to varieties and cultural methods have their crops inspected in the growing stage to ensure that they are true to type. The produce is afterwards inspected at merchants' premises and the sacks containing the seed potatoes of the certified crops are sealed by officers of the Department as a guarantee of their quality. The sacks themselves have also to bear certain identification marks which are prescribed by the Department. This seed is in demand not only for home use but for export and there is a good overseas trade in our certified seed potatoes.

In the production of horticultural crops growers have the advice and guidance of the local Instructors in Horticulture and the expert assistance of the small staff of horticultural experts on the Department's headquarters staff. Those of you who may have seen the Fruit Show which has been held for the past few years at the Royal Dublin Society's premises at Ballsbridge, with the assistance of a grant from the Department, will be able to judge of the very fine quality of apples that can be produced in this country when due care and proper methods of treatment are applied. At present we are endeavouring with a co-operative society in County Waterford to promote a scheme for the improved cultivation of apples on an extensive scale in a part of the

country which is specially suited for the purpose and for the provision of adequate packing facilities so that the fruit can be marketed to the best advantage.

Livestock

Irish farmers display great interest and skill in the production of livestock—cattle, pigs, sheep, poultry and horses. Many of the activities of the Department are concerned with the maintenance of the high quality of the country's livestock and livestock products. For breeding purposes only bulls and boars that have been licensed after inspection by the Department's livestock officers may be used. The keeping of good class bulls is encouraged by a system of subsidies or premiums which are made available through the various County Committees of Agriculture. The Department, in addition, purchases high class bulls which it leases or sells at reduced prices to the custodians. In the congested districts where the smaller holdings predominate, bulls are provided on specially favourable terms on condition that they are available for use in the locality in which they are located.

With a view to the improvement of the milking quality of dairy cattle the Department pays grants to Associations of farmers who keep systematic records of milk yields of their herds. These Associations which are mainly in the dairying districts employ their own Supervisors and are specially looked after by officers of the Department who keep in close contact with the operations of the Associations.

Creameries

The creameries to which the dairy farmers supply their milk are supervised by our Dairy Produce Inspectors—permanent officers who prior to their entry into our service had been trained as Creamery Managers. They are charged with the duty of seeing that milk supplies are delivered in a clean condition and that the equipment and arrangements in the creameries are effective and hygienic. There is a good deal of administrative work associated with the sale and distribution of creamery butter, as the retail price is

controlled and the difference between the economic price and the returns from sales at the controlled price has to be made up by payment of subsidies which in the aggregate amount to about £3,000,000 a year. To ensure that the quality of the butter is maintained at a high level creameries are from time to time asked at short notice to send samples of their churnings on particular days for testing and comparison at a specially equipped central butter-testing station in Dublin where a small staff of chemists and bacteriologists is employed. At this station also samples of water used in the creameries and of such things as the parchment used in wrapping the butter are regularly subjected to bacteriological tests.

The Department is charged by statute with the responsibility of ensuring that properly qualified personnel are employed by the various creameries. The course of training for creamery managers is conducted by the Dairy Science Faculty of University College, Cork. Special arrangements are made by the Department for the training of butter-makers and cheese-makers in creameries.

Though most of the butter now consumed in Dublin and other large centres of population is made at the creameries there is a substantial quantity of butter made by farmers themselves in their own homesteads. Some of this dairy butter is sold by farmers locally and a good deal of it is bought by merchants, mainly in Cork, who blend it and who dispose of the resulting product in markets with which they have long-established contacts. These blending concerns, or butter factories as they are called, are subject to registration and inspection by officers of the Department.

Pigs and Bacon

Even the most urbanised of us began to take an interest in pig production when a few years ago we found ourselves confronted with a shortage of bacon which was brought about chiefly by a shortage of feeding stuffs. To encourage the use of good boars for breeding, the system of premiums which I referred to as applying to bulls, is also operated in the case of boars, for which premiums are provided

through County Committees of Agriculture. The conversion of pigs into bacon is carried out at bacon factories which must be licensed by the Department. The animals for slaughter are examined ante-mortem and also post-mortem to ensure that only sound meat free from disease is allowed to be distributed as bacon. In the bacon factories we have Veterinary Surgeons who carry out these duties with the help of lay assistants. The veterinary examination of cattle intended for slaughter is similarly carried out except that in some cases the examination is shared by Veterinary Surgeons employed by the local authorities who work under the general superintendence of the Department's veterinary staffs. This veterinary examination applies to meat intended for home consumption as well as for export either in carcase form or as canned meat and at all meat canneries, as at the bacon factories, we have veterinary surgeons for the purpose of this examination. The examination of carcases of animals for food is of great importance from the public health point of view, particularly in regard to the detection of meat affected by tuberculosis or infested by the eggs of a particular class of tapeworm which is harmful to the human being.

Milk

Milk for liquid consumption in Dublin and Cork is supplied by farmers who are registered with the Milk Boards for the Dublin and Cork areas respectively. These Boards are statutory bodies and are elected by the various supplying interests concerned, namely the producers, wholesalers and retailers, the chairman being a nominee of the Minister for Agriculture. They have a certain measure of autonomy within the limits prescribed by the relevant statutes. A good deal of the milk in Dublin is sold as pasteurised milk and the plants at which this process is carried out have to be approved and inspected periodically by veterinary officers of the Department. Most of the liquid milk consumed throughout the country is unpasteurised but the dairies from which the milk comes are subject to periodic inspections by the veterinary officers of the local authorities,

again under the general superintendence of the Department of Agriculture. A comparatively small number of producers of milk engage in the production of what is called Highest Grade Milk, that is milk produced from cows which are certified to be free from tuberculosis. This involves frequent tuberculin testing of the animals by Veterinary Surgeons and the elimination of any that are found from time to time to be reactors. In addition very strict precautions have to be taken by the producers against the introduction of the disease into the farm and samples of the milk are taken at periods for bacteriological tests in order to ensure the maintenance of the quality of the article.

Poultry and Eggs

Poultry and eggs form an important part of our production and they figure prominently in our export returns. There has been in recent years a very considerable extension of hatcheries from which day-old chicks are distributed and this extension has been helped to a considerable extent by grants which have been paid to the hatchery owners by the Department. In order to eliminate the risk of disease the farms from which eggs are supplied to the hatcheries have to be licensed and their flocks periodically blood-tested by our officers to ensure that the birds are free from disease. To ascertain the comparative laying qualities of different classes of poultry the Department conducts at the Munster Institute in Cork an elaborate egg-laying competition every year at which the results are tabulated with great care and detail. On the termination of the competition the Department gives prizes for the pens of poultry showing the best results.

Horses

The Department of Agriculture is naturally closely concerned with several aspects of horse breeding. The breeding of bloodstock is a highly specialised industry and the Department's association with it mainly arises from the fact that we own the Tully Stud Farm near Kildare. The stud and farm are managed by a company set up by the

Government under a special Act of the Oireachtas and supplied with capital by the Government. The reports of the working of the company have to be submitted to the Department and the policy pursued by the company is subject to the approval of the Minister for Agriculture. At present there are some very valuable animals in the Tully Stud—one of them, "Royal Charger," cost £52,000—and the company has been having a good deal of success in the sale of its young stock.[1]

Under the Horse Breeding Act all sires used for service must be licensed. Special provision is made for bloodstock. Apart from the Act the Department operates special schemes for the encouragement of the Irish Draught horse and we also purchase high class sires which we locate at reduced prices with custodians throughout the country, the aim being to enable local breeders to produce good class hunters. Although the demand for horses for traction has declined considerably on account of the increased use of tractors and motor vehicles there remains, of course, a considerable need for them for work on farms and some demand for horses of the hunter type and for officers' mounts, which with bloodstock, form a useful export.

Animal Diseases

The safeguarding of the country's livestock from disease and the elimination of diseases at present existing are major concerns of the Department. Foot-and-mouth disease could wreak frightful havoc among our livestock. Whenever we have had an attack we have always followed the policy of slaughtering, with compensation, every animal found affected or in contact with the disease. Foot-and-mouth disease is prevalent on the Continent and there are frequent outbreaks of it in Great Britain. On account of its widespead incidence we have severe restrictions on the import of materials likely to convey the virus of the disease and there is a prohibition on the use of straw, hay and peat moss in the packing of merchandise coming into the country.

[1] Since this was written, an even more celebrated horse, Tulyar, has been acquired at a cost of £250,000. [Ed.]

We also keep a close watch on imports of commodities of animal origin such as bone meal so as to guard against the danger of foot-and-mouth virus being imported by such means.

In a similar manner, fowl pest could do great damage to our valuable poultry stocks. It, too, is rife in parts of the Continent and at present they are suffering from an attack of it in Great Britain. We had one attack, the first of its kind, a little over a year ago but we were fortunate to suppress it by restricting movement of poultry and slaughtering all birds suspected of being affected or which were in contact with the disease. Here again, we found it necessary to impose restrictions on such imports as might be likely to bring the disease into the country and these restrictions apply not only to domestic fowl and their eggs but also to game birds and even to pigeons. It is sometimes not understood by people affected by these restrictions why we should spread our net so widely, but the interests at stake are of such great national economic importance that we feel bound to take all practicable measures to avoid the risk of infection from these diseases. We have, compared with most countries, been very fortunate in maintaining a remarkable freedom from animal diseases. Many equine diseases which exist abroad are not found here and we have to exercise extreme care about the importation of horses from abroad. The importation of dogs is also carefully supervised and dogs which come from countries other than Great Britain have to be quarantined for a period of six months before they are allowed to be taken over by their owners. Not many of you here, I think, remember the time when we had rabies in the country. It was a great menace to the human population and it would be a very serious matter if the disease were to be introduced by any failure to enforce strictly our landing regulations. Apart from that, the export of dogs, such as greyhounds, would of course be prejudiciously affected by an outbreak anywhere in the country.

With the active co-operation of the veterinary profession we have been meeting with a certain measure of success

in the treatment of certain parasitic diseases in young stock which have been accountable for heavy losses each year and we are hopeful that we will soon be able to make considerable progress in the reduction, if not the elimination, of Contagious Abortion in cattle. To the ordinary person not particularly concerned with these matters, it is perhaps not easy to understand that the successful treatment of these diseases might mean in the aggregate the addition yearly to our farmers' income of a sum which would run into several millions of pounds. This battle with disease, which is part of our normal work relates not only to cattle but also to sheep and pigs.

For the purpose of research and investigation into animal diseases the Department maintains a Veterinary Research Laboratory at Thorndale, Drumcondra. The accommodation there has proved inadequate and we have recently purchased another property at Abbotstown, near Blanchardstown, Co. Dublin, with a considerable area of land attached to which we propose to transfer the Laboratory. In addition to investigations into diseases the Laboratory also examines pathological specimens for Veterinary Surgeons throughout the country and prepares and supplies certain vaccines to the profession at cheap rates.

Control of Exports

The produce of our agriculture, surplus to the requirements of our own population, is exported, and as you know it is on these exports that we so largely depend to maintain the community's present standard of living as the exports mainly provide the wherewithal to buy those commodities that we purchase abroad. One of our primary aims in the Department is to ensure the high quality of our exported agricultural products. In the case of live animals we try to achieve this by the measures for improved breeding which I have already referred to. For such commodities as eggs and poultry, we require dealers to be licensed and their premises and merchandise to be subject to inspection. The method of packing is prescribed for them and the produce they export is subject to inspection at the port of

exit by officers of the Department. The arrangements for sale of our produce abroad are frequently incorporated in Trade Agreements with other countries. As you know, we have had such agreements with the Government of Great Britain which takes the most of our surplus agricultural produce. The general arrangements covered by the Agreements give rise to frequent consultation with representatives of the British Government in regard to adjustments of price and other matters and such consultations mean that the senior officers of the Department have to take part in negotiations from time to time with their opposite numbers in London. In the circumstances obtaining in recent years we have found it necessary to canalise certain products through prescribed channels on their way to the foreign markets. This is done in the case of eggs and poultry by requiring all exporters to export through a non-profit-making commercial organisation, called Eggsports Ltd., which receives the payment for the produce exported and in turn makes the necessary remittances to the actual registered exporters throughout the country.

A similar arrangement has been made recently in regard to the marketing of potatoes. For our seed potatoes we have a promising market abroad. We have been sending seed to Spain and Portugal and in the years before the war we were sending some seed to places farther afield. Here again the produce, as already mentioned, is certified seed and we are hoping in future to arrange for the export of all such seed through the Potato Marketing Company which has been recently established by the Minister for Agriculture.

Live animals are marketed freely subject to certain licensing provisions which in the main apply to cattle sold to continental countries. All animals for export are, however, examined by Veterinary Inspectors before being shipped so as to ensure that they are not suffering from disease and that they are fit to travel. All ships engaged in the carrying of livestock have to comply with our Department's requirements as regards the accommodation and facilities for the animals being properly looked after while in transit. The transit of animals within the country

is also subject to our supervision so as to prevent overcrowding in vehicles or treatment that might amount to cruelty.

Arrangements for the sale of such milk products as cheese, condensed milk, dried milk and chocolate crumb are left largely in the hands of the manufacturers of these products who make the necessary arrangements with the buyers, chiefly in Great Britain.

Quasi-commercial Organisations

Mention a few moments ago of the quasi-commercial organisations dealing with eggs, poultry and potatoes suggests that it would perhaps be appropriate here to refer to some others in the same category. We have the Dairy Disposal Company, the three Directors of which are seconded officers of the Department, which operates a chain of creameries as well as the considerable factory for condensed milk at Lansdowne in Limerick. Though these properties are owned by the Department, having been acquired with public monies many years ago from the proprietary owners, and the Directors are officers of the Department, the concerns are worked on ordinary commercial lines. The results of the Company's operations are of course subject to our general oversight and their balance sheets come under annual review by the Public Accounts Committee of the Dáil. To this category of bodies also belongs the Butter Marketing Committee which discharges certain functions in relation to the distribution of butter in the Dublin area and in certain other areas in the country where difficulties might otherwise arise in the securing of adequate supplies of creamery butter to enable the holders of coupons to be supplied. The Pigs and Bacon Commission, which is a statutory body, has certain functions in relation to pigs and bacon which are defined in the relevant statutes. It has been existing for some time largely on a mark-time basis owing to the decline in the number of pigs which took place during the war but any increase in stocks resulting in an exportable surplus would immediately have its reactions on the activities of the Commission.

An important organisation with which we have very close contact is Grain Importers Ltd., through which imports of wheat, maize and other cereals are arranged. The commercial work in relation to cereals is an important side of the activities of our Department whose officers have to keep in close touch with Grain Importers Ltd. and with the fluctuations of the world's markets in wheat and maize and other such commodities. Our officers have had to attend in Washington at the discussions which led up to the International Wheat Agreement which was concluded between the principal exporting countries and a number of importing countries. The importing organisation here —Grain Importers Ltd.—distribute to the flour mills the imported wheat and there is a most complicated arrangement by which the mills, who must pay a guaranteed price for all home-produced wheat, are given the imported wheat at such a price as enables them to sell the flour to bakers at a figure which enables the latter in turn to sell bread to the public at the controlled price. The deficits incurred by Grain Importers in these transactions are made good by payments we make from the Subsidy provision in our Vote. Some idea may be formed of the size of these transactions and of the enormous amount of work involved when I say that the subsidy provision in the current financial year is over £7 million. These arrangements have involved the Department in very close contact with the flour milling industry and it is our function to determine, among other things, the grists they may use and the rates of extraction that must be adhered to. Our Cereals Division also deal with the questions affecting the price and distribution of wheat offals, oats and barley, although the controls in regard to oats and barley have been relaxed. It is the Cereals Division also which handles the registration of wheat dealers, seed wheat assemblers, and also the registration of the firms which engage in the manufacture of compound feeding stuffs, so as to ensure that these compounds conform to certain standards laid down by the Department.

INTERNATIONAL CONFERENCES

Reference to the International Wheat Council brings to mind a feature of the Department's work which has increased enormously in recent years. Attendance at International Conferences has always been a normal feature of the Department's work. In pre-war times these were generally of a technical or quasi-technical nature and were held in some cases yearly and in others at less frequent intervals. These Conferences are always useful in establishing contacts and exchanging information with the experts of other countries engaged in similar work and confronted by similar problems. Since the end of the war, however, the number and frequency of these International Meetings have greatly increased and it is one of our problems to provide staff for attendance at such meetings. Apart from International Conferences on veterinary, dairying, grass-land management, seed testing, or other technical or scientific matters, the meetings of the Food and Agriculture Organisation, and its subordinate bodies have made considerable demands on the time of our staff. We have had to send our representatives to meetings of these bodies in Washington, Paris and Geneva. The Marshall Plan which resulted in the setting up of the O.E.E.C. in Paris has also added greatly to this side of our work. At first, the O.E.E.C. was mainly concerned with measures by which production could be increased in the participating countries. They later came down to more specific inquiries as to the productive techniques in the several member countries and latterly have been engaged on the study of certain aspects of International Trade affecting the participating countries and more particularly, have been giving attention to the question of how far this trade can be liberalised. There is scarcely a month that we have not to send some member of our staff to Paris for meetings of the Committees, Sub-Committees or working parties of O.E.E.C. at which agricultural matters are considered.

EDUCATIONAL WORK

The greater attention in recent years that had to be devoted to commercial and trading matters has to some

extent, I fear, somewhat obscured what in former days and in times of easier international trading was regarded as the main function of the Department of Agriculture, that is, its educational work. The accumulation by experts of a vast store of information about matters affecting agricultural production is not of much value unless this can be communicated to the ordinary man working on the land who in the natural course of events cannot by himself keep abreast of the developments and changes which are constantly taking place and which vitally affect his interests or concern the occupation which he follows. We employ various means for the purpose of disseminating this information. We have the local Instructors in Agriculture, Horticulture, Poultry and Butter-making employed by the Committees of Agriculture. These are men and women who have been specially trained for this work and to whom information on various technical matters is being constantly supplied by the Department. Their business is to visit farmers, and advise them on their problems. They also, so far as circumstances permit, arrange winter classes in which the younger people working on the land are taken through a systematic course of instruction. There are the residential agricultural and rural domestic economy schools, some belonging to the Department and others to private managers (generally religious communities). The privately owned schools receive grants from the Department to enable them to provide courses of instruction prescribed or approved by the Department. All these schools are intended primarily for boys and girls who intend to return to their farms but they also, particularly in the cases of the boys' schools, are centres at which the pupils acquire a training that renders them suitable for employment by the Department on certain technical duties for which graduates in Agricultural Science are not needed.

At a higher level we have the Agricultural Faculty of University College, Dublin, and the Dairy Science Faculty of University College, Cork, where students of agriculture and dairy science pursue their studies and on receiving their degrees or diplomas become eligible for employment under

County Committees of Agriculture, in creameries or on the staff of the Department. The State contribution to both the Agricultural Faculty and the Dairy Science Faculty is borne on the Vote of the Department of Agriculture and in the natural order of things we have frequent contact with the members of both of these Faculties. The Veterinary College, Ballsbridge, is the property of the Department of Agriculture which maintains and staffs the College. Students are prepared there for the Diploma of the Royal College of Veterinary Surgeons; the examinations are held by examiners appointed by the Council of the Royal College and the students acquire the same qualifications—that is membership of the Royal College of Veterinary Surgeons —as those at the Veterinary Colleges of Great Britain. Recently the British Government have had legislation passed which aims at the closer association of veterinary education with the Universities and it is our aim here to take somewhat similar steps so as to maintain a somewhat equivalent position in the interest of our veterinary profession.

In addition to the provision of lectures and classes by the local Instructors employed by the County Committees of Agriculture, officers of the Department's central staff also deliver lectures throughout the country both on agricultural and veterinary matters. We keep in circulation a large number of leaflets on various matters relating to farming. These are readily available for anyone who asks for them and they are being constantly revised by our expert staff and kept up to date as far as possible.

For the convenience and help of our staffs we maintain a large library of up-to-date scientific and technical publications looked after by a special staff who, as well as performing the ordinary librarian duties, provide translations of technical information from publications issued in various continental languages.

Our arrangements for bringing information to the farmer include the laying down by the Instructors throughout the country of demonstration plots which contrast the effects of certain manurial or cultural treatments or the use of certain classes of seeds, and point the way to better methods.

We pay grants to certain agricultural shows at which good class animals and farm produce are displayed. We stage an agricultural exhibit at the Royal Dublin Society's Spring Show each year which attracts a great deal of interest even on the part of people who are not immediately interested in farming affairs. On a smaller scale exhibits of a similar type are provided at local shows by staffs of Committees of Agriculture.

The aims of the Irish Agricultural Organisation Society and of the Irish Countrywomen's Association are largely educational in the broad sense. The latter Society receives a substantial annual grant from the Department to enable it to maintain an adequate staff for the purpose of promoting the aims of the Society.

Two rural organisations that have come to the fore in recent years, Macra na Feirme and Muintir na Tire, are doing a good deal, especially among the younger generation of farmers to widen their views on farming questions and stimulate greater interest in the problems of their calling. The Department helps by providing lectures and film shows by experts at meetings of Clubs throughout the country and by short courses of instruction at one of our residential agricultural colleges.

A few words about our finances. The expenses of the various operations of the Department are, as in the cases of other State Departments, defrayed chiefly from monies provided in the annual parliamentary Vote. Our Vote now reaches a very substantial sum. In the current financial year—1950/51—the gross Estimate for Agriculture—apart from Fisheries—amounts to about £15½ million. We receive substantial sums by way of receipts which are credited as appropriations-in-aid. These receipts are of a miscellaneous character as may be gauged from a reference to Subhead R in our current year's Vote. They include substantial sums under the subheads of Local Taxation (Customs and Excise Duties) Grant, receipts from Church Temporalities Fund and Estate Duty Grant. These three items have been carried over from the days when the Department of Agriculture was provided with a special

endowment fund of its own which it was empowered to expend at its discretion without Treasury approval and subject only to scrutiny by the Comptroller and Auditor General. Apart from the substantial subsidies provided in the current Vote for flour and dairy produce—and these in reality are consumer subsidies—the bulk of the Department's expenditure is of an educational and reproductive nature. In this respect its character is distinguished from the expenditure incurred by most of the other State Departments. In addition to the Vote we have two special funds from which certain expenditure is defrayed. There is, first the Dairy Produce Price Stabilisation Fund which is fed from levies on sales of butter and cheese. Balances in this fund may be applied towards the payment of subsidies to creameries after the subsidy provision in the Vote has been exhausted.

The other special fund is the General Cattle Diseases Fund. This is contributed to partly from a subhead in our Vote and partly from special assessments made on the various County Councils. These latter assessments are limited on any particular occasion to a maximum of ½*d.* in the pound on the total rateable valuation of the counties. This fund is used for the purpose of recouping local authorities a fraction of certain expenditure incurred by them in the administration of the Diseases of Animals Acts such as the payment of compensation to owners of animals slaughtered under the Bovine Tuberculosis Order.

The administration of such a large Department with so many and such varied activities presents many problems in the day-to-day working. Some of these, no doubt, are familiar to officials in all State Departments. With us they sometimes appear to arise in a rather aggravated form. We have always to be on our guard against the tendency of officers to work as if they were in more or less watertight compartments. Our work, although covering a wide field, does not fall into well defined divisions. Practically every activity in the Department is related in some way to many others and if work is to proceed with smoothness and efficiency it is essential that officers must be kept informed

of what is being done from day to day by a number of their colleagues. A matter affecting, for example, dairying may have its reactions on something the Veterinary Division is dealing with, or something being done in the Cereals Division in regard to feeding stuffs may intimately affect what is in hands in the Poultry and Eggs Division. If the need for informing his colleagues in the other Divisions is overlooked by the officer taking action on a particular matter at the moment, awkward consequences may ensue. This interlocking of interests renders the co-ordination of effort by no means a simple task.

Another problem arises from the fact that our staff is not a homogeneous one. We have technical and professional officers working side by side with executive and administrative staffs. While in theory it may be easy enough to lay down a line of demarcation between the technical and administrative work, in practice it is found not so easy to say always where the responsibility of one ends and the other begins and the avoidance of collisions or friction in such circumstances must in general depend on the exercise of common sense and a spirit of harmonious co-operation. In common with other Departments we have the usual questions affecting the training of new staff, the selection of officers for promotion and other somewhat thorny questions of a like nature.

The non-technical Civil Servant of an inquiring turn of mind serving in the Department of Agriculture has a wide field open to him in his quest for information. He is in direct contact with the practical aspects of vital economic affairs, with the industry in fact from which the classical writers on economics, such as Mill, have drawn most of their illustrations. He is working side by side with experts in various branches of chemistry, physics, botany, bacteriology, biological and veterinary sciences and while, of course, he does not pretend to become himself an expert in any of these he cannot fail to acquire a certain acquaintance with many of these specialised activities and in fact must have some understanding of them if he is to do his work intelligently. He reaches an understanding of factors

that characterise the farmer's calling, that the latter is working in dependence on the processes of nature; dealing with active organic material in the soil, crops and animals.

In dealing with the farming community it has to be borne in mind that while economic considerations are paramount in the sense that a farmer cannot keep going if he has not some profit from his occupation, at the same time economic considerations alone are not always the determining factor. The farmer is also influenced by considerations arising from social and historical conditions, traditional attitudes and practices. These have a significant bearing on all our problems in the Department of Agriculture. The great variety in Irish farming makes it misleading to indulge in generalisations or over-simplification. In dealing with farming which is not only an industry by which half of our people make their living, but which is also a way of life, one has to be imbued with a broad and sympathetic understanding of the many and varied circumstances and conditions affecting life on the land.

The Department of Education

By M. BREATHNACH, M.A.

FORMERLY SECRETARY, DEPARTMENT OF EDUCATION

GENERAL FUNCTIONS

The administration of public education in the Republic of Ireland, in so far as the State is concerned, is assigned to a Department of Education operating under a Minister who is a Member of the Government and responsible to the Dáil. The Department is in charge of a Permanent Secretary and has as its immediate personnel an administrative staff in central offices in Dublin and a school inspectorate, the members of which are domiciled at various centres throughout the country. In varying degrees the Department of Education carries responsibility for the administration and supervision of the Primary Schools, the Secondary Schools, the Vocational Schools, the Reformatory and Industrial Schools, the Place of Detention at Marlboro' House, the Preparatory Colleges for the Secondary Education of boys and girls wishing to enter training for primary teaching, the special colleges in which primary teachers get their professional training, the National Museum and the National College of Art. In addition, the Minister for Education exercises a certain sanctioning authority in the administration of the National Library (including the Genealogical Office), the National Gallery and the Institute for Advanced Studies. There are a number of educational and cultural bodies which are financed, in whole or in part, by the State and the duty of supervising the expenditure of grants to such bodies falls to the Department of Education. Among the bodies in question are the Irish Folklore Commission, the Irish Committee of Historical Sciences, the Placenames Commission, Comhdháil, Náisiúnta na Gaeilge, An tOireachtas, the National Film Institute, Bord na Leabhar Gaeilge, Coiste na bPáistí, the Irish Colleges, Periodicals in Irish, the Gaelic Theatre in Galway, the Comhar

Drámuíochta in Dublin, the Schools' Drama League, An Compantás, the Gaeltacht Drama League and the Royal Irish Academy of Music.

PRIMARY EDUCATION—National Schools

Our State system of Primary Education dates from 1831. There were, of course, considerable facilities for elementary education prior to that date; there were "hedge-schools" and "pay schools" and a large number of schools set up by state-subsidised bodies and organisations, the most successful of which was the Kildare Place Society which operated from 1811 to about 1840. The almost all-out State system inaugurated in 1831 was administered down to the change of government in 1922 by a chartered body called the Commissioners of National Education or the National Board, all of whose powers and functions were eventually taken under the control of the Minister for Education.

According to the latest available statistics there were 4,879 National Schools in the Republic, with an average daily enrolment of 452,114 pupils and an average daily attendance of about 377,000. The grand total of teachers of all grades and classes serving in these schools was 13,413. Pupils between the ages of 4 and 18 may attend National Schools, but under the School Attendance Act, 1926, attendance is compulsory between the ages of 6 and 14 years. Primary education in National Schools is provided free. These schools were intended to be and, in theory, still are non-denominational in the sense that each school is open to pupils of all dominations. In practice, however, the system has spontaneously developed along denominational lines so that mixed schools from the religious point of view form a very small minority of the total number.

The Managerial System

Taking into account only what is by far the most usual arrangement, it may be said that the direct government of National Schools is vested in managers, who are appointed by the patrons or by bodies acting as patrons or by the

Minister for Education. To be eligible for appointment as Manager a person must be a clergyman or other suitable person and must reside within a convenient distance from the school. All schools erected with the aid of State grants are now vested in trustees one of whom is usually the Bishop of the diocese. With few exceptions the local Parish Priest or Rector is chosen as Manager of the schools of a parish. Among the manager's functions and duties are the provision of a suitable site and of the local contribution, in the case of a new school; the repair and maintenance of a school once it has been built; the appointment and removal of teachers, subject to the sanction of the Minister; the supplying, in part, of the cost of heating and cleaning the schools in his charge; frequent visits to each school to ensure that work is progressing regularly and that the Regulations of the Department are being fulfilled.

Functions of the Department

The functions of the Department of Education in relation to National Schools fall under the following headings:—

1. The granting of aid in the erection of school buildings;
2. The prescribing and approving of syllabuses and programmes;
3. The maintenance of a system of school inspection;
4. The payment of teachers' salaries, pensions and gratuities and of grants to schools;
5. The training of teachers;
6. The granting of aid towards the heating and cleaning of schools, towards the transport of pupils when circumstances so require, towards the provision of free requisites for new and reconstructed schools and towards the cost of free books for necessitous pupils.

Building Schools

In connection with the grant of aid for building, the schools are divided into two types, vested and non-vested. Non-vested schools are privately owned and were built

without the aid of State grants; they are ineligible, under the Regulations, for building grants and are not normally eligible for improvement nor reconstruction grants. In the case of vested schools portion of the cost of erection has to be provided locally; this contribution is on the basis of one-third of the total expenditure, but in exceptionally poor localities a lesser contribution may be accepted, with a grant proportionally greater than two-thirds from the State. The onus of providing a suitable site and of maintaining the school building, premises and equipment in proper condition devolves on the Manager, acting as representative of the local people whom the school serves. The Department of Education has no personnel of experts in building, so that all work of that kind is done through the Commissioners of Public Works.

The Curriculum

Religious Instruction is, naturally, a fundamental part of the course in all our National Schools and ample opportunities are afforded to the pupils of all such schools to receive Religious Instruction in accordance with the wishes of their parents.

In the official curriculum of secular instruction the obligatory subjects are Irish, English, Mathematics (with certain exemptions), History, Geography, Singing and, for girls, Needlework. Optional subjects are Drawing, Physical Training, Cookery, Laundry Work or Domestic Economy, Manual Instruction, Rural Science or Nature Study. Special grants are made in respect of instruction in Cookery, Laundry Work and Domestic Economy. Where the teacher is regarded as competent to give instruction through Irish, the work of the Infants' classes has to be entirely in Irish. The Department intimates in its Rules and Regulations that it is considered desirable that Managers should arrange the programme in their schools so as to suit the needs of the localities in which the schools are situated. Managers are, accordingly, encouraged to submit for approval, through the inspectors, alternative courses in any subject.

Inspection

At the present time there is a National School inspectorate numbering 67, as well as a small number of Organising Inspectors for Music, Kindergarten and Domestic Economy. A few years ago three inspectors were specially assigned to the Gaeltacht areas, with the duty of not merely supervising the language work in the schools but also of helping in the preservation and extension of Irish outside the schools. For the purposes of inspection the country is divided into 8 Divisions and forty-eight Districts. Apart from the Chief Inspector and three Deputy Chiefs who are occupied for the most part at headquarters. the duties of the field men, that is, the Divisional and District Inspectors, include visiting schools, and reporting on the efficiency of the teaching and the proficiency of the pupils, checking the school records, investigating school building problems and questions arising out of the appointment of teachers, examination work and organisation work in the Irish speaking districts. National School inspectors are recruited, through public competition, from experienced teachers, from professors in the Training Colleges and from the staffs of University Colleges, the great majority of appointees coming in recent years from the first-named category.

Training of Teachers

Candidates for qualification as national teachers are recruited from the following sources :—

1. Preparatory Colleges.
2. Training College Entrance Examination.
3. University Graduates.

There are six Preparatory Colleges. They were established in 1926, are maintained out of State funds and their function is to recruit for training young persons with an adequate command of the Irish language. Entrance to these colleges is by public competitive examination, the age limits being 13–15 years of age. The curriculum corresponds to that prescribed for recognised secondary schools. Fifty per cent. of the vacancies in the Preparatory Colleges are reserved

each year for candidates who secure not less than 85 per cent. of the marks in Oral Irish at the Entrance Examination and 50 per cent. of these places are, in turn, reserved for candidates from the Fíor-Ghaeltacht. Preparatory College pupils who pass the Leaving Certificate Examination of the Secondary Schools and satisfy certain other conditions pass automatically into a Training College.

The Special Training College Entrance Examination consists of a preliminary examination held at Easter in Oral Irish, Oral English, Singing, and Needlework for girls, combined with the Leaving Certificate Examination of the Secondary Schools. Places in the Training Colleges are awarded in order of merit of answering in the examinations.

University graduates who are candidates for training must qualify at the Easter Preliminary Examination and pass at the Leaving Certificate Examination in certain subjects if these have not been already, covered in their Degree Course. Honours graduates may be granted exemption from the first year of the Training College Course.

There are at present six recognised Training Colleges, the financial aid to all of which is by way of capitation grants. They are all under ecclesiastical control and the buildings are the property of the College authorities. Professorial appointments and certain matters of administration are subject to the approval of the Minister for Education. The course of training lasts two years and students are required to pay an annual fee which, in necessitous cases, may be advanced in full or in part, by the Department, the student being required to refund the advance made by deductions from his salary when he secures an appointment.

Salaries and Grants

When the national school system was first established, part of the teachers' salaries had to be provided locally, but that arrangement has long ceased to operate, the cost being now borne entirely by the State. There is a common salary set for women and single men, ranging from £285 to £525 per annum; and a special scale for married men,

ranging from £340 to £650. In addition, bonuses are payable in respect of special educational qualifications, and annual allowances, varying with the size of the school, are paid to principal teachers. In a recent revision of salary scales, national teachers were for the first time accorded children's allowances and a rent allowance. The cost to the State of national teachers remuneration for the financial year 1951–52 was £6,155,196, not including superannuation. At its inception in 1880 the pension scheme for national teachers was contributory; since 1934 it has been non-contributory. The scheme generally follows the lines of that operated for civil servants.

In respect of State grants, schools may be divided into two main classes—Classification Schools in which teachers are paid personal salaries, and Capitation Schools in which the conductors are paid by way of Capitation Grant at certain rates based on the average attendance of the pupils. With one exception Capitation Schools are conducted by Convents and Monasteries.

Grants are made by the Department in certain circumstances towards the cost of conveying children to school. There is a special scheme for the conveyance of Protestant children in isolated areas where suitable schools from the point of view of religion are not readily accessible, the expenditure being shared on a fifty-fifty basis with the Representative Church Body, subject to a maximum State contribution each year of £4,200. New schools and schools considerably enlarged or reconstructed receive a grant, proportionate to the attendance, towards the cost of the first stock of requisites—maps, charts, etc. And since 1939 there is a scheme for the provision of free books for necessitous children in the second and higher standards.

Examinations

The Primary Branch of the Department of Education has to conduct several examinations annually, including the Training College Entrance Examination, the Training College Final Examination, the Preparatory College Entrance Examination, several Scholarship Examinations,

the Primary Certificate Examination and the Examinations for Certificates in Irish. This work is carried out mainly by the Inspectors and involves the setting of papers, marking them or supervising the marking, and revision of many scripts after they have been marked.

SECONDARY EDUCATION—ORIGINS

The State system of Secondary Education in this country was established in 1878. Prior to that there were two types of secondary schools in operation—schools like the Diocesan Schools, the Royal Schools and the Erasmus Smith Schools, supported by subsidy from the State or by private endowments; and an number of independent Catholic colleges set up after the Penal Laws had been partially relaxed in 1782. The new system was placed under a Board of Commissioners of Intermediate Education and £1,000,000 from the funds of the disestablished Irish Church was assigned to the Commissioners for distribution. From the first, schools of all denominations participated in the scheme and thus the State-endowed schools and the Catholic independent schools came at last under a common system of administration. At the change of government in 1922, the Secondary School system, after a slight interim period, also came under our Ministry of Education.

There are at present about 425 recognised Secondary Schools in the Republic, with an attendance of nearly 50,000 pupils. The number of teachers, male and female, registered and unregistered, is slightly over 3,900. Secondary education is neither free nor compulsory and is provided entirely as a matter of private enterprise, the schools being all private institutions, owned by the Churches, Religious Orders, Boards of Governors and others.

RECOGNITION AND GRANTS

Before a secondary school can share in the aid available from the State it must be "recognised," that is, it must satisfy the Department in respect of certain conditions regarding premises and accommodation, number and qualifications of staff, range of curriculum, and probability of

success and continuity. The State makes no contribution towards the cost of building, maintaining or repairing secondary schools; all expenditure of that kind must be undertaken by the authorities of the schools.

The financial assistance given by the State falls mainly under the following heads :—

(*a*) A Capitation Grant paid in respect of each pupil who fulfils certain conditions in regard to age, attendance and course of study. This Grant is at the rate of £7 for each Junior Pupil and £10 for each Senior Pupil. The amount of Capitation Grant payable to a school may be increased by a sum not exceeding 25% of the amount of such grant if the Irish language is used as the medium of instruction.

(*b*) Special grants in respect of the teaching of Science, Domestic Economy, Manual Instruction, and Oral Irish, and Bonuses for Choirs and Orchestras.

(*c*) The Grant for Incremental Salaries of Secondary Teachers.

In addition to the grants from the State secondary schools also receive fees from their pupils. The Department does not interfere in the fixing of those fees.

Pupils are not recognised as eligible for Capitation Grant unless they are twelve years or over on the first day of the school year, but any pupil who has already qualified for the award of the Primary Certificate of the National Schools may be recognised from the age of eleven years, There is also the requirement that in order to qualify for recognition a pupil must make at least 70 attendances during the school year. Pupils who have not qualified for the Primary Certificate have to pass in an entrance examination conducted by the school authorities.

Over 1,500 classes qualify annually for the special Laboratory Grants given in respect of the teaching of Science, Domestic Economy and Manual Instruction. These grants vary as to grade and stage, and there is a regulation prescribing the maximum number that may be allowed in each class. About 120 schools qualify each

year for the award of the special grants for competence in Oral Irish. For the purposes of this scheme the schools are divided into four categories so as to avoid unfair competition. A quota of awards is assigned to each category in each inspection area and a minimum standard of qualification for each category is determined by the Department. Order of merit is assessed by oral examination of a representative number of pupils in each school. In 1950–51, 211 choirs and 53 orchestras presented themselves in the tests for the award of the special bonuses. The tests are conducted by a Committee of musical experts and the bonus varies in value according to grade and achievement.

Training and Registration

The appointment of teachers in secondary schools rests entirely with the school managers, but the efficiency of all teachers is tested by the Department's inspectors. There is no special college for the training of secondary teachers; a year's course in the Faculty of Education of a University, leading to the Higher Diploma in Education or equivalent qualification, is accepted as adequate from the point of view of professional training. Only registered teachers, and not all of those, receive increments of salary from the State. Qualifications for registration are regulated by the Registration Council, a statutory body set up in 1914 and consisting of representatives of the various secondary school authorities and organisations, the Universities and the Minister for Education. Applicants for registration must have a University Degree or equivalent, a Higher Diploma in Education or equivalent, one year's experience as a secondary teacher and oral proficiency in Irish.

Salaries

The salaries of registered secondary teachers are paid partly by the school authorities and partly by the State. The portion paid by the school authorities is called the Basic Salary and the portion paid by the State is called the Incremental Salary. The Basic Salary is fixed by the Department and amounts to £180 for women and £200

for men, non-resident, with appropriate reductions in case of residence. Each school must employ a minimum quota of registered teachers and incremental salary is paid only to a certain quota, both quotas being based on the number of recognised pupils in the school. Cases might arise where registered teachers would not be in receipt of incremental salary, for the reason that they would be in excess of the quota provided for in the Incremental Salary Rules. The total salary available to secondary teachers ranges from £335 to £610 a year for women and single men, and from £335 to £770 for married men. A bonus is given to teachers who possess an Honours Degree or its equivalent and married men are entitled to children's allowances and to a rent allowance.

Inspectorate

The personnel of the secondary school inspectorate consists of a Chief Inspector, two Deputy Chief Inspectors and nine District Inspectors. There are only two centres for secondary school inspectors—Dublin and Cork—and for inspection purposes the country is divided into three areas—East, West and South. Vacancies in the inspectorate are filled through public competition from experienced secondary teachers, from the primary school inspectorate, from University lecturers and from the professoriate of the Training Colleges. Specialised knowledge of a subject or small range of subjects is an essential qualification. Inspectors' duties include visits to schools to test efficiency and proficiency, investigation of applications for special grants, verification of the results of entrance examinations and setting papers for the annual Certificate Examinations and directing and supervising the marking of the scripts.

Curriculum and Examinations

The curriculum of our secondary schools covers a very wide range of subjects, including the Classical Languages, Latin and Greek, the usual Modern Languages, Irish, English, French, German, Italian, Spanish, the various branches of Mathematics, the various branches of Science, History, Geography, Music, Commerce, and Domestic

Science for girls. Theoretically the secondary school course extends from the age of 12 to 18, but in practice it is more frequently a four year's course—from 14 to 18. Pupils may sit for two examinations during the course—the Intermediate Certificate Examination, taken usually at about 16 years of age, and the Leaving Certificate Examination, taken at about 18 years of age. The Leaving Certificate Examination is accepted under certain conditions as equivalent to the Matriculation Examination of the National University and for some years past the programme of the two examinations have been more or less identical.

TECHNICAL AND VOCATIONAL EDUCATION—

Beginnings

The organisation of technical and craft education in this country is comparatively modern and its development was the result of voluntary movements in the cities and towns. The first major official step was taken when in 1887 the Dublin Technical Schools were established at Kevin Street, supported by a grant from the Corporation as well as by voluntary contributions. This was followed up in 1889 by the passing of the Technical Instruction Act. This Act empowered the local authorities to formulate schemes of technical or manual instruction, to raise a rate of not more than 1*d.* in the £ in aid of such instruction and to appoint Committees to administer the provisions of the Act, the governmental sanctioning body being at the time the English Department of Science and Art. In 1899 a further advance was made when the Department of Agriculture and Technical Instruction was set up. In 1926 a Commission was appointed to enquire into and advise upon the system of Technical Education in Saorstát Éireann. An Act was passed in 1930 under the provisions of which, and of certain subsequent amending Acts, Technical and Vocational Education is now being administered.

Local Committees

The most striking difference between our Technical and Vocational system and our Primary and Secondary systems

lies in the fact that Technical and Vocational education is in the charge of local committees. The country is divided into 38 vocational education areas, comprising 4 County Boroughs, 7 scheduled urban areas and 27 county areas. A Vocational Education Committee administers vocational education in each of these areas. The Committees are elected by the local councils—borough, urban and county —and consist partly of members of the councils and partly of other persons; these committees are not otherwise controlled by the councils and are corporate bodies with power to acquire and hold land. The Committees are themselves required to appoint their staffs, but the numbers, qualifications, remuneration and appointment of all officers are subject to the approval of the Minister for Education. The Principal Officer under each Committee is the Chief Executive Officer and he supervises the administration of the scheme sanctioned for the area by the Minister and directs the day to day working of the Committee.

FINANCE

Committees are financed from two sources—the annual local contribution levied by the rating authority and the State grant which the Minister for Education is empowered to make with the concurrence of the Minister for Finance. The minimum annual local contribution is the amount accruing from a rate of 3*d.* in the £ in county boroughs and scheduled urban areas and $1\frac{3}{4}d.$ in the £ in counties. The maximum local contribution varies from 7*d.* to 1/– in the £ in accordance with the estimated ultimate needs of the various committees. Every demand for an annual local contribution requires to be authorised by the Minister for Education. The State grants payable to Committees consist of a Basic Grant corresponding to the minimum local rate contribution and an Additional Grant in respect of local rate contributions raised above the minimum. This Additional Grant is at the rate of £1 for £1 in the case of the County Committees, £2 for £1 in Dublin and Dúnlaoghaire and £4 for £1 in the scheduled urban areas of Bray, Drogheda, Sligo, Tralee and Wexford and in the County Boroughs of Cork, Limerick and Waterford.

Attendance

Attendance at Technical and Vocational Schools is in general voluntary, but Part V of the 1930 Act contains provision for compulsory attendance at courses of continuation education in any area to which that part of the Act is applied by order of the Minister. Where it is applied, young persons between 14 and 16 who are resident in the area, whether they are in employment or not, must attend a compulsory course of 180 hours a year, if not in attendance at a Secondary, National or other approved school or course. Employers must afford time and liberty for attendance at such compulsory course without deduction in wages or additional hours of work. Part VI of the Act contains provision for the compulsory attendance of persons between 16 and 18 at courses in technical education, covering the particular trade in which they are engaged. Part V is in operation at present in Cork, Limerick and Waterford, but Part VI has not been applied to any area up to the present.

Building of Schools

Proposals from Committees for the building of schools must have the sanction and approval of the Minister. Building is financed either from surplus funds at the disposal of the Committee or from a loan raised on the security of the Committee's funds or by means of a grant from the local rating authority. The size of the school to be built is regulated according to the estimated number of students and the type of course to be pursued. In 1925 there were about 25 technical schools in the country; at present there are 200 schools and future developments, as at present contemplated, envisage additional schools at over 100 new centres. A Vocational School in a rural area or small town is intended to serve the surrounding area to the extent of a radius of about six miles.

Teachers

The appointment of teachers is in the hands of the Committees, but the numbers, qualifications, and salaries of all teachers are subject to the approval of the Minister.

The remuneration of Vocational Teachers is paid entirely out of the Vocational Committee's funds in accordance with scales of salary authorised by the Minister. Allowances in excess of the ordinary scales are paid for special qualifications and for special work. In general, teachers other than Domestic Economy Instructresses, Manual Instructors and Art teachers are required to be University graduates. Domestic Economy Instructresses must possess the Diploma of a recognised College of Domestic Economy. Manual Instructors are recruited as a result of Special Training Courses which are conducted by the Department. Art teachers must have the Art Teachers' Certificate or the Diploma of a recognised College of Art. Teachers of Irish are required to have the Teastas Timire Gaeilge of the Department. During the school year 1949–50 there were 1,142 teachers of all types engaged in our Vocational Schools. The ordinary salary scale for Vocational teachers ranges from £335 to £610 for single men and women and from £335 to £770 for married men. As is the case with Primary and Secondary teachers, married vocational teachers are entitled to children's allowances and an allowance in aid of rent. Their pension scheme is contributory for teachers appointed after the passing of the Superannuation Act of 1948, but non-contributory for those appointed prior to that.

Courses and Classes

The activities and operations of the Vocational Schools are so manifold and varied that it is not easy to include them all in a brief summary. Young persons from fourteen upwards are catered for in day continuation classes while both young persons and adults are free to attend evening and night classes. The fees charged for tuition are nominal and are within the competence of all. The curriculum embraces a very wide range of subjects, with, of course, emphasis on what are called the practical subjects. Junior day pupils can study Irish, English, Geography, Woodwork, Metalwork, Mechanical Drawing, Science, Mathematics, Commerce and Domestic Science for Girls. Special courses

are organised in Apprenticeship training and these are regulated so as to cater for the industries and occupations of the neighbourhood in which the school is situated. In Dublin there are schemes of apprenticeship training in the Printing Trades, Electrical Installation, Engineering Trades, Motor Car Engineering and other trades pertaining to transport. All conceivable subjects, academic and practical, with the exception of Latin and Greek are covered by the evening and night classes.

Examinations

The Vocational Branch of the Department of Education operates a wide system of examinations covering all the subjects taught in the schools, and certificates of proficiency are conferred on successful candidates. Some idea of the extent to which this service is availed of may be conveyed by the fact that in one year there were as many as 16,000 entries for the adult examinations in practical subjects and as many as 10,000 certificates were awarded.

Inspection

Vocational schools are inspected by the Department of Education much in the same way as are Primary and Secondary Schools. The inspectorial staff consists of a Chief Inspector, two Senior Inspectors and about fifteen District Inspectors. The inspectors report on the work in the schools and act as liaison officers between the Department and the local Committees. They are recruited from University graduates, diplomees in Domestic Economy and Art, and experts in the various branches of trades and engineering.

REFORMATORY AND INDUSTRIAL SCHOOLS

Schools and Committals

There are 3 Reformatory Schools and 51 Industrial Schools. Children are committed by the Court thereto under the Children Act and Amendments, 1908–1949, and under the School Attendance Act, 1926. Children over 12 and

under 15 may be committed to a Reformatory, the minimum period of detention being two years and the maximum four. Children up to 15 years of age may be committed to Industrial Schools. The number annually committed to Reformatories varies from 100 to 150 (80–122 boys and 20–30 girls). The number committed annually to Industrial Schools varies from 700 to 1,000, in the approximate proportion of 7 boys to 5 girls, the principal cause of committal being poverty or circumstances caused thereby.

After-care

After discharge from a Reformatory or Industrial School the child is liable to remain under the supervision of the Manager up to 18 years of age and to 19 years of age respectively, but in both cases the Minister may, at the request of the School Manager extend the period of supervision to the age of 21 years.

Management and Finance

Reformatories and Industrial Schools are private institutions owned and managed by Religious Orders, but subject to inspection by the Minister for Education. The schools are financed by capitation grants from the Department of Education and from the Local Authority, at the rate of 17/6 from the former and 15/6 to 16/6 from the latter in the case of Reformatories and at the rate of 15/– from the Department and 15/– from the Local Authority in the case of Industrial Schools.

Discharge

Children and young persons under detention in either type of school may be released on supervision certificate by the Manager or discharged absolutely or conditionally by the Minister for Education at the discretion of the Manager and the Minister for Education respectively.

House of Detention

There is one House of Detention situated in Glasnevin. Boys are sent there for a night on their way to an Industrial School, or to await trial, or on remand for a week, or for

detention there for not more than a month. There is accommodation for about 50 but the daily average in residence is only about 10 or 12.

Instruction

The instruction given in Reformatories and Industrial Schools include the usual primary school subjects up to 14 years of age and subsequent training leading to proficiency in a trade or calling.

THE NATIONAL LIBRARY

The National Library of Ireland owes its origin to the Royal Dublin Society. The large and valuable library of the Society was handed over to the State in 1877 and formed the nucleus of the National Library of Ireland. Until 1890 the collections were housed in Leinster House, but in that year the present building was opened. Since then a further wing for newspapers, periodicals, maps and prints has been added.

In 1900 the administration of the library, which from 1877 came under the Science and Art Department, South Kensington, London, was transferred to the newly founded Department of Agriculture and Technical Instruction for Ireland. In common with the other Science and Art Institutions it passed in 1924 to the Department of Education. The library is under the superintendence of a Board of Trustees, four members of which are appointed by the Government and eight are elected annually by the Royal Dublin Society. The Trustees appoint the staff, who, for the rest are nominated for appointment through the ordinary Civil Service machinery. The staff includes a Director, a Keeper of Printed Books, a Keeper of Manuscripts (who is also Chief Herald and Genealogical Officer), two Assistant Keepers and seven Assistant Librarians, all of whom are Honours University graduates. The total establishment is 40 not including porters and cleaners.

The Department of Printed Books has over 500,000 volumes. The annual intake of books, periodicals, govern-

ment and international organisation publications exceeds 12,000 volumes. Of these 1,500 are received under the Copyright Act of 1927 which entitles the library to receive a free copy of every publication issued in this country.

The Department of Manuscripts has expanded greatly in the last decade. The library provides a repository for the numerous family archives which during this century have been coming on the market very frequently, with the disappearance, owing to economic changes, of the large landed estates. It also collects all papers of Irish literary or historical interest. The department contains over 7,000 bound volumes of manuscripts (600 volumes in the Irish language), about 10,000 parchment deeds, etc., and a very large number of unsorted collections.

Realising that nearly ninety per cent. of the source material for Irish history is preserved in libraries and archives outside Ireland, the library has undertaken the vast project of copying on microfilm all this material. Nearly all the manuscripts written by Irish monks in the Middle Ages which have survived in libraries all over Europe have been listed and many of them copied. Practically every manuscript of Irish interest in the British Museum is now on microfilm in the library. Manuscripts in private possession in Ireland are discovered and, if they cannot be acquired, are filmed so as to safeguard against the possible destruction of the originals and to make their contents available to students.

The photographic section of the library provides microfilms, photographs or photostats to readers or research students who require copies of newspapers, books or documents in the library collections.

In 1943 the Ulster Office of Arms, Dublin Castle, (now renamed the Genealogical Office) was taken over by the library together with its collection of manuscripts (over 600 volumes mainly of pedigrees and will abstracts) and its heraldic museum. All the former functions of the Ulster Office, including the granting of coats of arms, the tracing of family pedigrees, etc., are now discharged by the Genealogical Office.

THE NATIONAL MUSEUM

The National Museum originated in a collection of models of agricultural implements, etc., accumulated by the Dublin Society (later the Royal Dublin Society) and exhibited for the first time in 1732, in the vaults of the Parliament House. In 1815 the collection was transferred to Leinster House, the new home of the Society.

In 1877 the Society's collections and those of the Royal Irish Academy were, under the Dublin Science and Museum Act of that year, transferred to the Government and a Board of Visitors set up.

The Board of Visitors remains and comprises four members appointed by the Minister for Education, five members appointed by the R.D.S. and three members appointed by the R.I.A.

The present Museum building was opened in 1890 and under the Act of 1899 the Museum was transferred from the English Science and Arts Department to the Department of Agriculture and Technical Instruction for Ireland, whence under the Ministers and Secretaries Act of 1924 it became an organic part of the Department of Education.

The Museum is organised in three Divisions, viz., Irish Antiquities Division, Art and Industrial Division and Natural History Division, each in the immediate charge of a Keeper with a staff of professional and Technical Assistants and Attendants.

The administration of the Museum is under existing arrangements assigned to a Principal Officer of the Headquarters staff of the Department.

INSTITUTE FOR ADVANCED STUDIES

The Dublin Institute for Advanced Studies was established by Act of the Oireachtas in 1940.

It consists of a School of Celtic Studies, a School of Theoretical Physics and a School of Cosmic Physics, the first two having been set up in 1940 and the last in 1947.

The general government and administration of the Institute is vested in " the body corporate of the Institute,"

viz., the Council, which comprises a Chairman appointed by the President on the advice of the Government, three ex-officio members and two members from each Constituent school.

In each Constituent school there are three posts of Senior Professor, and appointments to these posts are made by the President, on the advice of the Government.

Appointments to the academic and administrative staff are subject in respect of number, remuneration and conditions of employment to the approval of the Minister for Education, with the concurrence of the Minister for Finance.

The Institute is financed by an annual grant, out of moneys provided by the Oireachtas, of an amount determined by the Minister for Education with the concurrence of the Minister for Finance.

The accounts of the Institute are subject to audit by the Comptroller and Auditor General and they, together with the Comptroller and Auditor General's report thereon, must be laid before each House of the Oireachtas.

The Accounting Officer responsible for the Institute is the Secretary of the Department of Education.

NATIONAL COLLEGE OF ART

A Commission was appointed in 1905 to enquire into the condition of Art institutions in Dublin. A report was issued in 1906 but little effect was given to the recommendations of the Commission.

In 1927 the Minister of Education set up a special Committee to consider the matter, but again little advance was made.

In 1936 the present organisation was set up and what had been the Metropolitan School of Art became the National College of Art. There are three main departments in the College—The School of Design in Industry, the School of Painting and the School of Sculpture. The College grants a Diploma after completion of three years in any of its departments. Two Scholarships and ten free places are awarded annually by the Department of Education.

THE NATIONAL GALLERY

The National Gallery is conducted by a statutory Board of Governors and Guardians. This Board was constituted a Body Corporate with perpetual succession in 1854. The Board consists of seventeen members of whom the Minister for Education, with the approval of the Government, appoints ten. The Government representatives are appointed for periods of five years and the appointments are ordinarily renewable. The appointment of the staff is entirely in the hands of the Governors. Departmental responsibility for the Gallery is assigned, by the Ministers and Secretaries Act of 1924, to the Minister for Education, but for administrative convenience the Director of the Gallery is also the Accounting Officer.

Conclusion

The most striking developments in our educational system since it was taken over by a native government have been the efforts being made through the schools to restore the Irish language, the enormous increase in the demand for secondary education and the rapid growth and extension of Technical and Vocational Education. Irish is now an obligatory subject in all primary and secondary schools and in vocational schools it is an essential subject in most of the Continuation Courses. The number of pupils attending secondary schools has almost doubled in the last twenty-five years and each year brings an accretion of almost a thousand. Parents all over the country have now become alive to the importance of technical and vocational training for boys and girls who would benefit little by the academic education given in our secondary schools, and in a short time even the most remote areas of the country will have the invaluable services of a properly staffed and properly equipped vocational school.

*The Administration of Exchange Control in Ireland**

By G. P. S. HOGAN

ASSISTANT SECRETARY, DEPARTMENT OF FINANCE

It has always been a popular notion that the main task of the Department of Finance is to prevent other people from spending money. The idea that the zealots of that Department are seeking to protect the taxpayer may command some public approval, in a general sort of way, but it is more usual to hear accusations that what is known as " the Finance mind " is still obcssed by a view of public finance that died with Gladstone, believes that reduction of public expenditure is the panacea for all economic ills and finds in the pursuit of economy excuses for mere parsimony and ill-judged frugality. It is, of course, too facile a view of the basis of financial control which sets it in the context of the classical " policy of retrenchment " and ignores the tremendous value in the organisation of Government of a co-ordinating financial agency, designed not only to secure that public income and expenditure can be regulated in an orderly and unified manner but, also, to be the main administrative instrument by which, in a democratic society, effect is given to the principle of parliamentary control over financial affairs. In that essential field of activity the work and responsibilities of the Department of Finance have developed with the changing times, just as has been the case with similar Departments elsewhere. In a recent lecture, which deserves special study, Sir Edward Bridges, Permanent Secretary of the British Treasury, has pointed out how from the nineteen-twenties onwards the Treasury Staff began to think of expenditure less in terms of spending so much public money and more in terms of the employment of national resources and that, having regard to the expansion of the objects of Government spending, they

* Paper read January, 1951.

thenceforward had a dual task, first to see how much of the resources were being devoted to public expenditure and secondly to approve within such overall limits the projects which gave the best value for the money; and how at a later stage, during and since World War II, there arrived so many complex and difficult Budgetary problems on which the Treasury were called to advise, full employment, inflation and deflation, the investment programme, the balance of payments, and so forth. In this country also the same progress and pattern can be traced. One has only to compare the form and content of the Budget speech of the Minister for Finance in the early 'fifties with that of twenty-five years ago to mark the difference in the scope of financial policy and in the nature of the consequential administrative problems and, thereby, to judge how misleading it is to portray the Department of Finance as concerned in its day-to-day tasks solely with the prevention of new public expenditure and the achievement of economics in existing services.

II—ORGANISATION OF DEPARTMENT OF FINANCE

When the Department of Finance was set up in 1922—to be strictly accurate it was the Ministry of Finance until 1924, when it was given statutory form as a Department of State under the Ministers and Secretaries Act—it was organised into three Divisions, following the traditional pattern inherited from Whitehall. The Supply Division is concerned with the expenditures and legislative proposals (apart from staff matters) of the Government services borne on Votes; the Establishment Division deals with all questions concerning the recruitment, pay and other conditions of service of the Civil Service, the staffing needs of Departments, organisation and methods of work, in the interests of efficiency and uniformity; and the Finance Division, as well as supervising the Vote expenditures of the Department itself and of the various services for which it has accounting responsibility, e.g. the Houses of the

Oireachtas, the Civil Service Commission, the State Laboratory, etc., deals with all Government capital expenditure, the financial affairs of the many State Boards and Companies, borrowing, investment, proposals for taxation, the preparation of the Budget, annual financial legislation, in short all the questions involved in the financial and economic policies of the State. While each of these three Divisions forms a sort of *imperium in imperio*, their activities are interdependent, under the direction of the Secretary of the Department and over him of the political head, the Minister for Finance. When exchange control became necessary, the work was allocated to the Finance Division, but as it grew in volume and complexity, this arrangement proved unworkable and since 1948 a fourth Division, the Exchange Control Division, has been included in the organisation of the Department of Finance. What this accretion to what might be called the traditional functions and organisation of the Department has involved in terms of cost may be judged by the facts that in 1940–41 the Estimates provided £62,000 in respect of the salaries of a staff of 130 for the Department as a whole, while in 1950–51 the Estimates included £43,000 for the Exchange Control Division alone, in respect of a staff numbering 105 ; for the rest of the Department, i.e. excluding Exchange Control, the Estimates for 1950–51 showed, numbers 132, cost £92,000. These facts are mentioned simply to indicate the relative size of this diversion from the Department's normal supervisory and co-ordinating activities into the the field of direct executive action, and not to illustrate the truth that any Government control is not only a restraint on the citizen's freedom of action but also hits him in his pocket as a taxpayer ; in this case he has had whatever consolation may be found in the belief that the control is essential and gives good value for the money. It may be added that exchange control does not involve only the State in cost, because the Head Offices of banks and commercial institutions doing large foreign business have had additional burdens placed on their staffing resources as a result of the Regulations.

III—USES OF EXCHANGE CONTROL

What is exchange control? In general terms it means that by legislation or Government decree a resident of a country (or a monetary area) is forbidden to make a payment abroad or to transfer funds into the ownership of a resident of another country, or by his act or omission to cause the foreign exchange resources of his country to be depleted or to prevent these resources from being augmented, unless for any of these transactions he has obtained the permission of the exchange control authority. Such a system of control is so devised that it can achieve many purposes; it can either alone, or in conjunction with physical controls over the movement of goods, be used to regulate the country's balance of payments, either generally, or in relation to particular countries or monetary areas; it can ensure that foreign currencies or securities payable in such currencies which are in private ownership will be mobilised and controlled for State purposes; it can enable the State to choose the objects on which foreign exchange and, particularly, hard currencies will be spent; it can prevent a flight of capital from a country in economic distress and provide a weapon whereby forces threatening the value and stability of a country's currency as a means of exchange abroad can be opposed.

Such a system as described is not necessarily the same in all countries where an Exchange Control flourishes. In some the control may be comprehensive, not only in its administrative scope, but also as regards the foreign countries and currencies against which it operates; in others, the control may have a limited application, some types of transactions being free from restriction and some countries which are foreign in the political sense being exempted from the exchange barriers which apply to others. Again, in some countries exchange control may be operated with great rigour and harshness, while elsewhere the system, while severe on paper, is liberal in practice. It will be observed that in exchange control the test whether an individual is subject to the regulations is residence

and not citizenship. Another feature is that because most of the transactions subject to control are effected through the banking system the restrictions and regulations imposed by the State require the diligent co-operation of the commercial banks.

The circumstances in which an Irish Exchange Control came into being may be briefly noted. Until 2nd September 1939, there had been no such control in this country or in Britain or elsewhere among the countries comprising the so-called sterling area, not even during World War I nor during the great depression of the early thirties. For indeed, this form of restriction on the freedom of the citizen to do what he likes with what he believes to be his own money is not a purely war-time expedient. Many European countries, as, for instance, Germany, Italy, Czechoslovakia, beset by difficulties in their balance of payments and by the depreciated value of their currencies as a medium of exchange resorted to exchange control during the years from 1930 onwards. A comprehensive system of exchange control had been blue-printed in Britain during the uneasy peace before September, 1939, and came into operation immediately she became a belligerent by virtue of Defence Orders in Council. The primary purpose was to prevent a flight of capital from London to U.S.A. or South America, or Switzerland, a process which would have greatly weakened sterling on the world exchanges, but, from the outset, it was seen that the foreign exchange resources of Britain and of the sterling area as a whole, including the private investments and balances of British residents in U.S.A. and other hard currency countries, would be strained to the utmost to provide the sinews of war and that expenditure of currencies, particularly dollars, would have to be rationed so as to give priority to payments for vital imports for armaments and for maintaining essential food supplies. Although not at war this country was equally concerned to maintain essential imports. The means of payment for such imports from non-sterling countries could be found through co-operation in the exchange control policies of the rest of

the sterling area, thus ensuring continued access to the common reserves of the area held in London. In relation to the extent of its needs this country had virtually no foreign exchange resources in Government ownership or represented by the investments of its citizens abroad, other than those that could be derived from the convertibility of the large Irish sterling balances through the London market within the framework of the sterling area system. It is unnecessary for the purposes of this lecture to elaborate these circumstances or to dwell on the financial and economic conditions, the hard facts of geography and history, that made them so. In September 1939, Ireland, in order to maintain access to the London pool of foreign exchange found it necessary to introduce a system of control parallel in its purpose and in its main administrative features and practices, with those already existing or being set up throughout all the countries of the sterling area. This, of course, had been foreseen and some plans had been laid. In what I may call a small back room in Merrion Street, fortified by a couple of Government Orders, surrounded by a mass of hastily-printed green forms and beset by worried bankers and harassed business men, two or three officers of the Department of Finance, the pioneers in this unfamiliar field of administration, began their heavy task.

IV—THE STERLING AREA

At the risk of digression a word may be said in explanation of the sterling area. It was not created, rather it came into existence by a process of evolution. It is true that in domestic law we like other sterling area countries for the purposes of exchange control define the area in statutes or regulations by a list of " scheduled territories " which can be changed from time to time, but this does not mean that the sterling area is bound together by any treaties or formal engagements which set down the nature of the association and the rights and duties of member countries. The informality and flexibility of the arrangements have been said to give the system its great strength. The industrial

revolution, the emergence of London as the great financial centre of the world, the consequent strength and acceptability of the pound sterling as a world currency, these developments created a group of countries which co-operated in financial and monetary policies based on sterling, carried their foreign balances in London and, in some instances, formally linked their own currencies with sterling. While the last circumstance is applicable to Ireland, that is, of course, not the whole story and I have heard it said that " Ireland is a foundation member of the sterling area," the presumed point being that this country should be regarded as having preferential claims over newer associates. At all events, the strength of the association was shown in 1931 when Britain went off the gold standard and most, if not indeed all, of the countries comprising the sterling bloc followed suit. The tendency, natural enough, to regard the sterling area as being the British Commonwealth of Nations viewed from a monetary angle is incorrect. Apart from the fact that this concept ignores the place of Canada in the dollar area and the special position of Hong Kong, where a great entrepôt trade created a dollar currency of its own, the sterling area system just before the recent war included all the Scandinavian and Baltic countries, Egypt, Portugal, Iraq, Siam and some of the South American republics. The tide and circumstances of war and the imposition of exchange control reduced the size of the group to those countries, called the " inner " sterling area, within which funds could be freely transferred and for which the central reserves of foreign exchange in London were available to finance essential imports and other payments. Some neutrals, such as Ireland and Egypt, still remained members. Since the war the situation has in essence remained the same, although one may remark the classification in British official publications between " Britain and Dependent Overseas Territories " (the new term for " colonies ") and the " Independent Sterling Area ", the latter comprising the Commonwealth countries of Australia, New Zealand, South Africa, Southern Rhodesia, India, Pakistan and

Ceylon, together with Ireland, Burma, Iceland, Iraq, Libya and Jordan. Egypt and Israel have resigned or lost their membership. As it is, the sterling area remains the largest multilateral monetary and trade area in the world and, while exchange control persists, these arrangements have helped to alleviate the scope of the irksome restrictions on trade.

The co-ordination of the national systems of exchange control throughout the sterling area is of particular importance. Uniformity of system and general practice not alone enables funds to be transferred freely within the area, but also has the effect that the decisions of the Control of one sterling area country will be honoured by that of another; so that, for instance, the approval of the Irish Control relating to the purchase of goods by an Irish importer through an English buying agent will be sufficient to enable the latter to obtain the requisite foreign exchange for the transaction through his own bank in Britain, or a New Zealand bank holding funds to the account of an Australian resident will be enabled to transfer these funds outside the sterling area on the basis of the approval issued for the transaction by the Australian exchange control. It will also be seen that this kind of reciprocal arrangement can exist only on the basis that all the countries concerned are, in fact, enforcing the same general rules because, otherwise, if one country was ill-disposed or lax in its administration that circumstance could be used to arrange and give effect to unauthorised and harmful transactions not only by its own residents but by residents of other sterling area countries. In this context the sterling area can be viewed as a group of countries around which there is a fence. Within the fence all financial transactions can take place freely but no unauthorised payments can be made to countries outside the fence nor can the funds so move within the fence that ownership of them is given to the residents of countries outside the fence, except with permission and subject to conditions. A country that is not in line with its partners in this association has either to change its methods or else to move itself, or be removed, outside the fence.

V—LEGAL BASIS OF EXCHANGE CONTROL

The original legislative authority for the Irish Exchange Control is to be found in the Emergency Powers Act, 1939, which gave the Government all the extraordinary powers necessary for the state of emergency defined in the First Amendment to the Constitution. Under that Act the Government, by the Emergency Powers (No. 4) Order dated 8th September 1939, conferred on the Minister for Finance the necessary powers to restrict payments abroad and to enforce other essential features of an exchange control. As the needs of the system grew other Orders followed, of which may be mentioned the Emergency Powers (No. 29) Order, 1940, which provided for the control and acquisition of securities; the Emergency Powers (No. 43) Order, 1940, which prohibited the importation of British bank notes from non-sterling countries (the purpose being to exclude from the sterling area the vast quantities of such notes seized by the Germans in France and the Low Countries); the Emergency Powers (No. 81) Order, 1941, which compelled Irish residents to sell their dollar balances to the Minister for Finance; and the Emergency Powers (Control of Exports) Orders which created the system under which Irish exporters to non-sterling countries were obliged to satisfy the Exchange Control that they would receive effective payment in the currency of the country of destination or in some other approved manner that would serve to increase Irish foreign exchange resources.

On the termination of war, the Emergency Powers Act was replaced by the Supplies and Services (Temporary Provisions) Act, 1946, which has been continued each year and provides the authority for the Exchange Control. Under that Act, the Government made the Exchange Control Order of December 1947, which consolidated into one statutory regulation the Code which up to that time could be found only in a confusing mass of war-time Orders. The Order of 1947, with a few subsidiary orders made thereunder by the Minister for Finance, still holds the field.

Broadly the provisions of the Exchange Control Order may be grouped into two main categories (*a*) what the Irish resident is forbidden to do and (*b*) what he must do. To escape from the mandatory restriction or obligation an individual has to obtain an exemption which the Minister for Finance, i.e. the Exchange Control, is empowered to issue. Every permission issued to an importer to purchase and pay for goods from, say, the dollar area is, in fact, an exemption as contemplated by the terms of the Order. As examples of the two main categories to which I have referred, one may notice among the provisions of the Order (*a*) the prohibitions against buying or selling gold or foreign exchange, against making any payment to a non-sterling territory, against placing an order for goods originating in such a territory, against making any promise, or entering into any arrangement, which involves a payment to a person resident outside the sterling area or to such a person's account in an Irish bank, and (*b*) the obligations on Irish residents to sell balances in "specified currencies" which they may in any manner acquire to the Minister for Finance through an Irish bank, to keep their foreign securities, particularly dollar securities, deposited with an Irish bank, so that such securities may be available for acquisition by the Minister for Finance if the need should arise, to collect promptly all trade or other debts due to them in foreign currency, and to comply with any request for information or the production of documents issued to them in writing by an authorised officer of the Exchange Control.

I am afraid that even the provisions of the Order do not tell the whole story. As is usual in such codes, the Minister has power to "prescribe" and part of the administrative law on the subject has to be found in the statutory directions on matters of detail issued to the Bank (which are, of course, available to the public) and even in the conditions embodied in the exemptions or permits granted to individuals. The point is of some importance because in proceedings for infringements of the Orders these statutory instruments may sometimes be material

matter. Parenthetically it may be remarked that the investigation of suspected currency offences is one of the troublesome aspects of the work of the Exchange Control, occasionally enlivened by fascinating insights into human motives and ingenuity.

One can only glance at some other legislation affecting exchange control—the provisions of the Finance Act, 1941, which established the Foreign Exchange Account under the control of the Minister for Finance, in practice a sort of receptacle for hard currency receipts, and those sections of the Appropriation Act, 1948, and of the Central Fund Acts, 1949–50, which authorised the holding by the Central Bank of accounts representing the local currency counterpart of the dollars provided under the Marshall Plan.

VI—THE NATURE OF EXCHANGE CONTROL IN IRELAND

Turning now to some of the administrative problems of our Exchange Control, it has always occasioned some surprise to foreign observers that we should have allowed our central Department of Finance to assume such a burden of detailed day to day control over all currency transactions. In the first place, the position elsewhere normally is that the exchange control is co-related to a comprehensive system of import licensing, so that once the periodic import programme has been settled by the Government with due regard to the foreign exchange position, an exporter can automatically secure foreign exchange through his bank by producing a valid import licence. In this way once policy has been settled the Exchange Control was not in general troubled with trade applications and reserved its operations for transactions on invisible account. This is broadly the position in Britain where the importer's permit comes from the Board of Trade and not from the Exchange Control. In the second place, in other countries the Central Bank plays an important administrative role in foreign exchange. In Britain, for instance, the Bank of England is the vehicle

through which Treasury policy on exchange control is conveyed to the commercial banks and it is to the Bank of England that these banks submit such non-trade applications from customers as they cannot deal with under delegated authority, or requests for guidance as regards methods of payment for approved imports, and other problems arising out of the control. The Treasury only occasionally has an individual case presenting special features sent to it for adjudication. There is, of course, nothing abnormal in this arrangement in any country where, prior to exchange control, the Central Bank had been exercising functions and influence in the domain of foreign exchange and balance of payments and holding the national reserves of foreign currency. Here the position has been quite otherwise because there was no comprehensive licensing of imports—there were good reasons for this—and the Central Bank operations had not been such as to allow it to undertake functions in connection with exchange control. These factors must be clearly grasped in order to understand the work which the Department of Finance has being doing in this field since 1939. There emerged very quickly, in addition to the problems of creating an entirely new system of control and of settling policies to govern the circumstances and difficulties that changed so rapidly, the task of coping with a huge volume of applications and correspondence on individual cases. At the outset an effort was made to avert this by allowing the banks to provide currency without reference to the Exchange Control in the case of certain "normal trade payments" but an unfortunate experience in 1940–41 proved that this procedure was too dangerous and unfair to the banks in the conditions of war-time; and so every single application had thenceforward to come to the Exchange Control until it became possible to resume a measure of delegation to the banks in circumstances which I shall mention later.

Apart from the place of travel agencies in regard to payments within their special role, applications for foreign exchange are almost universally submitted on forms

through the applicant's bank. The bank has a duty to vouch, so far as it can, for the accuracy of its customer's statements on the form. There are different forms for the various main categories of transactions and the Exchange Control decision, whether positive or negative, is endorsed on the form, which is in duplicate, so that one copy can be kept for record and for following the transaction out to its completion. Special permits, apart from the forms, were issued in the case of imports financed under Marshall Aid. In addition to the examination of and adjudication on forms there is a great volume of correspondence because very often before the stage of submitting proposals for effecting a payment the applicant writes as to his chances and, also, the Exchange Control has often to ask for further particulars or explanations and to consult other Departments who may be interested in the policy aspects of the proposals. I need hardly tell you that, in a field of this sort, experience showed how to avoid unnecessary correspondence and how to use stocks of neostyled letters to meet requests and inquiries of a similar and recurrent character. One maxim had always to be observed : however like they might appear to be no two applications were necessarily the same and each proposal had to be decided on its merits after careful examination. In the result, of course, thousands of applications involving many millions of pounds have been handled each year.

VII—ADMINISTRATIVE PROBLEMS

It is unnecessary to elaborate the events of 1948 which established that Ireland, although still a member of the sterling area, would be a separate participating country in O.E.E.C., and the recipient of separate allotments of Aid from E.C.A. In June, 1948, it was agreed between the Irish and British Governments that Ireland would continue to have access to the sterling area pool during the period of Marshall Aid on the basis of temporary accommodation pending receipt of reimbursement by E.C.A., and would so arrange matters that, so far as practicable, there would

during that period be no net draw on the pool. All these developments created new administrative problems for the Exchange Control. Programming of all imports, with particular precision regarding the dollar area, had to be undertaken. Special staffing and methods had to be devised to meet the procedural and accounting requirements, which E.C.A. found it necessary to attach to the provision of Aid. Counterpart Funds had to be set up, on the one hand to provide for the repayment of Loan Aid and on the other to enable the equivalent in Irish currency of Grant Aid given by the American Government to be applied to capital projects for the development of the Irish economy. These arrangements cannot be described here in any detail; they would require a separate lecture.

It is natural that in any description of the work of the Exchange Control there should be emphasis on the dollar aspect and on the problems that arose from the existence of the "dollar gap." But one must not forget that the control has been comprehensive and great blocks of the work relate to imports from other currency areas, particularly those of a "hard" character. Apart from imports, all payments to any country outside the sterling area on invisible account have had to be controlled, e.g. travel, emigration, legacies, compassionate remittances, interest on foreign-held investments in Ireland and, in the latter context, proposals for new investment which involved consideration by the Exchange Control of the extent to which future liabilities for transfer of profits or repatriation of capital could be allowed. The control over foreign securities held by Irish residents has involved considerable work and given rise to special problems. Over the whole field of exchange control it has been necessary from time to time to deal rapidly with an entirely new situation, such as occurred when the pound sterling was devalued in September 1949. Fortunately, so far as the volume of work and the nature of the problems were concerned the effect of the Marshall Plan and the efforts of O.E.E.C. to promote a satisfactory means of achieving multilateral payments between the

participating countries of Western Europe through the European Payments Union gradually bore fruit; and this enabled some of the detailed work of the Exchange Control in relation to non-dollar currencies to be reduced. In March, 1950, the Irish banks were given delegated authority to approve and implement payments for imports from the majority of European countries and quite recently this delegation has been extended to Belgium, Western Germany and Switzerland, payments to which had, prior to E.P.U., required special attention. It will be the general hope that circumstances will make it possible to continue and expand this liberalisation of transactions from the heavy hand of exchange control. Delegation to the banks, of course, does not mean that the control has terminated; the banks still have to require the completion of forms by their customers and be satisfied as to their genuineness. But these forms, instead of having to receive prior adjudication by the Department of Finance, now come forward *post factum* as a record of completed cases for statistical purposes and for ensuring that the delegated authority is working satisfactorily.

As indicated much of the loosening of exchange control restrictions has been facilitated by the European Payments Union. While Ireland, as one of the participating countries in O.E.E.C., is a member of the Union and signed the Agreement of 19th September, 1950, as one of the countries "desiring to establish among themselves a multilateral system of payments in order that trade, both visible and invisible, may proceed on a multilateral basis between them and the monetary areas associated with them," she adheres to the Union not as a separate unit for accounting and clearing purposes but as a member of the sterling area. In reply to a parliamentary question by Deputy Lemass on 9th November, 1950, as to why, in the circumstances of E.P.U., "payments between this country and other European countries which are members of the European Payments Union, should continue to be effected through the Bank of England instead of through the Union," the Minister for Finance stated :—

"Payments between this country and other members of the European Payments Union are brought to account through the union as transactions of the sterling area. The procedure is in accordance with the European Payments Union Agreement, which contemplates that monetary areas should be dealt with as units, and, in existing circumstances, it is considered preferable to any alternative arrangements for settling payments with European countries, as these would entail considerable administrative difficulty and expense without compensating advantages. The position of the Irish Government was stated in the form of a reservation, in the following terms to signature of the agreement :—

In the existing circumstances, as Ireland is a member of the sterling area, the provisions of the present agreement require no specific action by her and signature of the present agreement on her behalf is subject to the understanding that its operation will not modify the existing arrangements governing payments between her and the other contracting parties. (*Dail Debates*, Vol. 123, No. 4, Cols. 519–20.)

In reply to further questions by Deputy Lemass on 29th November, 1950, the Minister for Finance gave additional information as to existing arrangements governing payments between Ireland and European countries and as to the reasons why the Government found such arrangements "convenient and satisfactory" and had decided not to make alternative arrangements through the clearing mechanism of E.P.U. (*Dail Debates*, Vol. 123, No. 9, Cos. 1395–97.)

VIII—ORGANISATION AND METHOD OF WORK

While the developments towards liberalisation have made it possible to effect reductions in staff and economies in the administrative cost of exchange control the organisation still remains essentially the same. The Exchange Control Division is sub-divided into two parts, a General Section which deals with all questions apart from

imports and general statistics, and a Trade Section which also includes the main work of statistics, records, documentation for E.C.A., etc., Having been associated with the Exchange Control since the end of 1939, I can observe quite obvious differences between the organisation and method of work in that Division as compared with the normal features of the work of the Department. In the first place, there is necessarily an absence of the detailed notation on the files which characterises Finance work proper. The important proposals for expenditure or on financial policy generally, which come before the Department of Finance, as I have described earlier, naturally require careful exposition on files, the marshalling of the pros and cons and the writing of considered decisions in formal terms. Files do, of course, exist in the Exchange Control and a full record of all applications and correspondence is kept, but the decision is everything and time often does not permit of any attempt to minute a file in the traditional manner. It has been essential to achieve rapidity of decision while, at the same time, maintaining uniformity of principle and policy in the rulings given by the Control. That has been the real task and, on the whole, although nothing can be perfect, the organisation has met its responsibilities in a worthy manner. Secondly, necessity for quick decisions involved considerable delegation of authority to comparatively junior officials. In the Trade Section this is particularly so, where the work is organised on a commodity grouping and not on a geographical basis, and where, with citizens' financial interests so closely involved and offers of commercial deals having often to be taken or rejected within a matter of days or even hours, it was essential to avoid delays in reaching decisions. The Minister for Finance is, of course, the deciding authority but, either expressly under the Emergency Powers Orders or under his general power of delegation under the Ministers and Secretaries Act, he has entrusted the giving of decisions on individual currency applications to authorised officials. While the extent of this delegated authority must necessarily vary with the rank of the officer, the point I make is that

in Exchange Control delegation must necessarily extend to a lower grade of official than is normally the administrative practice. Thirdly, the nature of exchange control work, as well as being of the highest interest and importance concerning problems affecting the very life-blood of the country's economy, involves having to deal directly with the applicant or customer and in a detailed and intimate fashion. This is far removed from the normal work of Department of Finance officials who as a rule, except in establishment matters, have no contact with those who benefit from—or suffer under—their decisions. There is usually some other Department or organisation between them and Seán citizen. In Exchange Control it is quite different, the applicant is on the threshold and he is importunate. While the customer is not always right, the Exchange Control aims to help him over his difficulties so far as possible and to inspire him with confidence that he can give the fullest details and explanations of his business, as involved in his currency application, without fear that he will be prejudiced. That is not to say that the customer is always pleased or placated. Sometimes he is vexed and sometimes irritated by delays (to which, perhaps, he has himself contributed). But these instances are very few and, on the whole, it may not be too foolhardy to claim that the public have been as satisfied as they are ever likely to be with a restrictive agency.

IX—STAFFING OF EXCHANGE CONTROL

The staffing of the Exchange Control presented special problems when the work began to expand, as it did very rapidly during 1947 and 1948. Fortunately due to the reduction of war-time staffs elsewhere it was possible to secure some experienced officers who had from their previous duties knowledge of commodity requirements, commercial practices and shipping or customs regulations and adapted themselves more easily to Exchange Control. Nonetheless considerable efforts were required to put the

organisation into the top gear required by the situation. Special attention had to be given after April, 1948, to the building up of a section able to provide punctually the statistics and documentation, the records of contracts made and the detailed reports on arrivals and condition of shipments, required by E.C.A. in respect of transactions which had been financed under the Marshall Plan. It is fair, I think, to say that responsible officers in the Exchange Control have to acquire more than a nodding acquaintance with the expertise of banking, particularly foreign exchange banking, the stock exchanges, and shipping and insurance practices.

A considerable amount of the time of members of the Exchange Control staff must be devoted to interviewing applicants and undertaking consultations with other Departments having an interest in the particular problem. Mention of consultations of the latter kind brings to mind that in recent years due to the increasing scope, complexity and urgency of administrative problems the practice has developed considerably of having in being standing inter-departmental committees or working parties which enable difficult matters to be handled and decisions reached much more quickly than by correspondence, and also provide a basis on which combined official opinion or advice on major issues in which more than one Department is concerned can be submitted to Ministers. Within the range of matters affecting exchange control inter-departmental activity of this kind plays an important role. There is also, as can be understood from much that has gone before, a pronounced international element in the major problems of exchange control and senior officers of the Division have been required to visit London, Paris and Washington in connection with matters affecting the sterling area, or the policies and practices of O.E.E.C., or the settlement of financial and procedural questions with E.C.A. For obvious reasons Irish delegations sent to negotiate Trade Agreements with non-sterling countries have normally included a representative of the Exchange Control.

X—CO-OPERATION OF BANKS

The system of exchange control could not function in any adequate fashion without the continuous and efficient co-operation of the banking system. It is true that such co-operation is required by the same law as laid down the system, but experience has shown the great value to the Control of the unstinted help given by the Foreign Managers and their staffs in the Irish banks. Indeed they had much to cope with, not only in the Regulations, but in the voluminous working instructions and requests for statistics issued to them so often by the Control. It is on record that during the war the manager of a provincial branch in England sent a report to his Head Office that that day his branch had suffered two air-raids and two new Foreign Exchange Regulations and that the latter had caused the more trouble—and doubtless headaches also ! A joint committee established by the Minister for Finance in July, 1948, of representatives of the Exchange Control and of the banks meets regularly to discuss technical aspects of exchange control, to review existing methods with a view to simplicity and expedition and to settle difficulties of interpretation or application of the code. These meetings have proved of great value.

The New Social Welfare Scheme

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1. Social Security schemes are of two main types. Insurance schemes which are contributory and Assistance schemes which are not. Under Insurance schemes the insured persons are required to pay weekly contributions in return for which they are given contractual rights to benefits. Assistance schemes are financed out of rates or taxes and payments are usually on the basis of a means test. Children's Allowances which are financed out of taxes are paid without a means test.

2. The legislation contained in the Social Welfare Act, 1952 provides a fairly comprehensive Insurance scheme. In addition it enacted many important amendments of Assistances schemes. It introduces important changes in administration. I propose to deal in broad outline with these three aspects of the scheme, that is to say with—

A—Insurance.

B—Assistance.

C—Administration.

A—SOCIAL INSURANCE

3. Three schemes of social insurance had been in operation :

(*a*) Unemployment Insurance under the Unemployment Insurance Acts from 1912 ;

(*b*) Health Insurance under the National Health Insurance Acts from 1912 ;

(*c*) Widows' and Orphans' Contributory Pensions under the Widows' and Orphans' Pensions Acts from 1935.

There is also what is known as the Wet Time scheme under the Insurance (Intermittent Unemployment) Act, 1942,

which provides an hourly rate of benefit for manual workers in the building trade during periods when work has to be suspended owing to the inclemency of the weather. This scheme is of limited operation and has not been extended by the Act.

4. The Social Welfare Act, 1952, replaced these three schemes of social insurance by one co-ordinated scheme. The new scheme is of somewhat greater scope than any of the three replaced schemes. It provides better benefits of the same classes. In addition it provides one new class of benefit.

5. The three old schemes grew up piece-meal, each problem being dealt with more or less independently. As a result there were differences of scope and two books or cards on which stamps had to be affixed, one for Unemployment and one for Health and Pensions. Under the new scheme there is one Insurance card for each contributor. Though the needs were the same the rates of benefit had been different as were the contribution conditions. Under the new scheme the same rate of benefit is paid for sickness, unemployment, maternity and widowhood. The reduction of the rate in the case of prolonged illness under the old arrangements has been abolished and a qualified person can now draw disability benefit indefinitely. Under the old schemes the rates of unemployment benefit were increased for a person with qualified dependants but no such increase was given to him when in receipt of sickness or disablement benefit. This anomaly has been removed. The payment of dependants' benefit as an addition to disability benefit for an indefinite period makes immeasurably better provision for incapacity than was hitherto available. Under the old schemes a claimant of unemployment benefit had to give six waiting days for which he was not paid ; a claimant for sickness benefit had to give three only. Under the new scheme the waiting period is three days for both. The contributions conditions to be satisfied for disability and unemployment benefit are practically similar. In these and other ways a considerable degree of co-ordination and assimilation has been achieved.

SCOPE

6. (*a*) Under the new scheme every person between the ages of 16 and 70 who is employed under a contract of service will be insured. Male employees in agriculture and in domestic service are covered against unemployment for the first time, but female employees in agriculture and private domestic service still remain outside the scope of Unemployment Insurance. Persons engaged in employment, whether manual or non-manual, whose rate of remuneration exceeds £600 are excepted. The other persons specifically excepted fall into general categories of no great numerical significance.

(*b*) Power is, however, given to modify by regulations the provisions of the Act in the case of Civil Servants, members of the Defence Forces, employees of local or public authorities, teachers in National or Secondary Schools, seamen and airmen. Under these powers the Minister has made the Modification of Insurance Regulations of which the following is a summary :—

MODIFICATION OF INSURANCE REGULATIONS.

(I) A contribution of 1/6*d.*—payable 9*d.* each by employer and employee shall be paid in respect of persons employed

(*a*) in the Civil Service in a pensionable post,

(*b*) as a permanent officer in the Defence Forces,

(*c*) under a local or other public authority in a pensionable capacity and where the conditions of his employment provide for payment of salary during illness on a basis satisfactory to the Minister,

(*d*) employment in a statutory transport undertaking in a permanent capacity as a clerk or other salaried official,

(*e*) as a national school teacher or as a secondary school teacher in a pensionable capacity,

(*f*) employment as a member of the Army Nursing Service in a permanent capacity.

Such contributions will be reckoned only for widow's pension or orphan's allowance. In effect, therefore, these classes are insured for one type of benefit only.

(II) A contribution of 2/9*d.*—payable 2*s.* by the employer and 9*d.* by the employee—is payable in respect of a member of the Defence Forces other than a permanent officer.

(III) A contribution of 2*s.* —payable 1/3*d.* by the employer and 9*d.* by the employee is payable in respect of a person employed in the Army Nursing Service other than as a permanent member of that service.

The contributions payable under (II) or (III) will not grant title to benefit other than maternity benefit, treatment benefit (to such extent as may be provided for in Regulations) and widow's pension where such pension is granted prior to becoming a member of the Defence Forces or Army Nursing Service. This restriction on the grant of benefit will remain while the person is serving as a member of the Defence Forces or the Army Nursing Service. When such service is ended the benefits of the Act may be obtained on the same conditions as for other contributors.

(*c*) Provision is made for including by regulation in the scope of the Act persons whose employments are excepted in Part II of the First Schedule. Power is taken to exclude by regulation particular employments or any classes of employment from the employments specified as insurable or to add to those employments particular employments or any classes of employment. An " Insurance Inclusions and Exclusions Regulation " has been made under these powers. The regulations—

(I) add to the employments which are insurable—

(*a*) employment as a Court Messenger,

(*b*) employment by way of manual labour at a rate exceeding £600 per annum or in the case of part-time employment at a rate of remuneration equal to a rate exceeding £600 per annum for whole-time service.

(II) add to the Excepted Employments—

(*a*) employment under a local or other public authority as a Coroner or Deputy Coroner, as a Public Analyst, Superintendent Registrar or Registrar of Births, etc., employment of persons in receipt of general assistance as a condition for the receipt of such assistance or employment of inmates of institutions; employment of sick or

disabled persons as a method of rehabilitation; employment in the execution of contracts, other than contracts of service or apprenticeship or contracts for service where only *one* person is employed and he gives personal service,

(*b*) employment where the employed person is in Holy Orders or is a Minister of Religion or is living in a religious community as a member,

(*c*) employment as a doctor,

(*d*) employment as a dentist.

CONTRIBUTIONS

7. (*a*) Under the new scheme there are ordinary rates and special rates of contribution as well as rates for Voluntary Contributors. The special contribution rates are payable where the employed contributor is a man employed in agriculture or a woman employed in agriculture or domestic service.

The new rates of contribution of every class are as follows :—

NEW RATES OF CONTRIBUTION

Class	MALE			FEMALE		
	Insured Person	Employer	Total	Insured Person	Employer	Total
Ordinary . .	2*s.* 4*d.*	2*s.* 4*d.*	4*s.* 8*d.*	1*s.* 4*d.*	2*s.* 0*d.*	3*s.* 4*d.*
Special (Agricultural Workers and female domestic servants) . .	1*s.* 3*d.*	1*s.* 3*d.*	2*s.* 6*d.*	9*d.*	1*s.* 3*d.*	2*s.* 0*d.*
Voluntary Contributors . .	—	—	1*s.* 6*d.*	—	—	1*s.* 6*d.*

The ordinary contributions payable since 6th October 1952 are greater than the sum of the contributions payable prior to that date by 9*d.* in the case of males and 4*d.* in the case of females, of which 5*d.* will be borne by the male employee and 2*d.* by the female employee.

(*b*) Under the former system weekly contributions in respect of persons insurable under both the Health schemes

and the Widows' and Orphans' Pensions scheme were paid together by affixing combined Health and Pensions Insurance stamps to Contribution Cards. Contributions in respect of Unemployment Insurance were paid by affixing Unemployment Insurance stamps to Unemployment Books. Many persons therefore had two insurance books or cards and a manual worker in the building trade had three. Contributions in respect of persons insurable for Widows' and Orphans' Pensions only were payable not by means of stamps affixed to cards but by periodical remittances forwarded to the Department of Social Welfare.

(*d*) The new contributions are paid by means of Insurance stamps affixed to Insurance Cards, or by stamps impressed by a machine to Insurance Cards in accordance with arrangements that may be approved by the Minister. There is only one card and one contribution to cover all the proposed classes of benefit. Building Trade workers, however, continue to use Wet Time Books in addition.

(*e*) Under the new scheme contributions will be credited to an insured person's account in respect of certain periods for which no contributions were actually paid. The crediting of contributions is governed by regulations, the main provisions of which allow contributions to be credited in respect of periods of proved unemployment or notified incapacity for work. Contributions credited may be counted towards the satisfaction of certain statutory conditions for benefit.

CONTRIBUTION CONDITIONS FOR BENEFIT

8. In order to qualify for a particular benefit, a claimant has to satisfy the contribution conditions appropriate to that benefit. Those conditions, except in the case of Orphan's Allowance, are of two categories :—

(*a*) that a specified number of contributions have been actually paid in respect of the insured person since his entry into insurance, and

(*b*) that the contribution record in a recent year reaches a specified standard except in the case of Widow's Pension where a three or five year average is required.

For an Orphan's Allowance the requirement in (*a*) only is applicable. The requirement under (*b*) can be satisfied in relation to other benefits not only by contributions which are actually paid but also by contributions which are credited. Where the contribution conditions under (*b*) for entitlement to disability benefit, unemployment benefit or marriage benefit are not satisfied, power is taken to provide by regulations that those benefits may be paid on a reduced scale, but any increase of benefit for a qualified child is paid at the full rate. This power has now been exercised in the "Social Welfare (Disability, Unemployment and Marriage Benefit) Regulations, 1953," which provides benefit for those who have certain numbers of paid or credited contributions in the prescribed period but insufficient to enable them to qualify for standard rates of benefit.

BENEFITS

9. The new scheme gives under the same or different titles all the classes of benefit given by the three old insurance schemes. The classes of benefit under the old scheme were :—

Unemployment Benefit ;
Sickness Benefit ;
Disablement Benefit ;
Maternity Benefit ;
Widows' Pensions ;
Orphans' Pensions ;
Marriage Benefit.

Under the 1952 Act the Maternity Benefit includes in addition to a Maternity grant a Maternity Allowance which is an important new Benefit.

UNEMPLOYMENT BENEFIT AND DISABILITY BENEFIT

10. (*a*) Under the old system the weekly rates of Unemployment Benefit and Sickness Benefit prior to July 1952 were 22/6*d.* for a man and 18/- for a woman. In the case of Sickness Benefit these rates were payable to insured persons irrespective of age. In the case of Unemployment Benefit only approximately half of these rates

were paid to juveniles, that is, persons under 18. The rates of Unemployment Benefit were increased in respect of dependants. The increase for an adult dependant was 7/6*d.* a week and for each child 2/6*d.* There were no such increases in Sickness or Disablement Benefit. Sickness Benefit was paid for 26 weeks after which it was replaced by Disability Benefit of 15/– for a man and 13/6*d.* for a woman. Unemployment Benefit was payable for a maximum period of 156 days (26 weeks) in each benefit year, provided that not more than one day's benefit was paid for each stamp. Unemployment Benefit was not payable in respect of the first six days of unemployment. Sickness Benefit was not payable in respect of the first three days.

(*b*) In the new scheme Sickness and Disablement Benefit are merged into one and called Disability Benefit. The rates of disability benefit and unemployment benefit are identical, being 24/– a week for a man without dependants, 12/– extra being payable for a dependent wife (or a woman having the care of dependent children) and 7/– for a qualified child or each of two qualified children. Thus, a man with a dependent wife and two children who previously received 35/– a week when unemployed now receives 50/– a week. Under the National Health Insurance code a man with a dependent wife and two children received when sick, 22/6*d.*, subject to reduction after six months to 15/– a week, as against 50/– under the new scheme. The six waiting days for unemployment benefit are reduced to three days. Where not less than 26 contributions have been paid in respect of an employed contributor since his entry into insurance and where not less than 50 contributions have been paid in respect of him or have been credited to him for the contribution year which governs the grant of benefit, such employed contributor, on furnishing proof of sickness or unemployment is entitled to disability benefit for 312 days (i.e. a year) or to unemployment benefit for 156 days (i.e. 6 months). If the employed contributor receives disability benefit to the extent stated, he remains qualified to receive that benefit if 156 contributions have been paid in respect of him since his

entry into insurance. In other words, if he satisfies the contribution conditions, he can receive Disability Benefit indefinitely. It is different with Unemployment Benefit. If the employed contributor has received unemployment benefit for 156 days, he is not qualified to receive that benefit again until 13 further contributions have been paid in respect of him.

(*c*) There is one significant and important exception to this rule limiting Unemployment Benefit to 156 days. An employed contributor who is over 65 years of age and who has 156 paid contributions on record is not required to requalify after receiving 156 days' Unemployment Benefit : in other words there is no overriding maximum to the days in respect of which he may be paid Unemployment Benefit. In effect, this is a special provision in respect of age and might be said to be, in broad effect, an Old Age Pension for those between the ages of 65 and 70.

(*d*) Special rates of disability benefit and unemployment benefit are payable to persons under 18 years of age, and to married women maintained by their husbands. But where a person under 18 is entitled to an increase for a qualified child or an adult dependant he is paid the same rate as a person over the age of 18.

(*e*) Under the new scheme the same rates of Unemployment Benefit are payable to single women, widows and certain classes of married women as those payable to men.

(*f*) A contributor who has not 50 contributions paid or credited to him in the prescribed contribution year but has 26 to 49 such contributions may be paid unemployment or disability benefit at reduced rates. For example, a man is paid a weekly rate of 18/– if he has 26 to 33 such contributions, 20/– if he has 34 to 41 and 22/– if he has 42 to 49.

Maternity Benefit

11. Maternity Benefit, payable in respect of confinement, consists of (1) a lump sum maternity grant of £2 and (2) a maternity allowance of 24/– a week for 12 weeks. The maternity allowance is payable only on the woman's own

insurance ; the maternity grant is payable on the insurance of the woman or her husband or on both. The maternity allowance is intended to relieve the insured woman from the necessity of working immediately prior and subsequent to the confinement, but provision is made that when the confinement occurs later than expected the allowance continues to be payable until the expiration of the sixth week after confinement. Certain contribution conditions must be fulfilled to qualify for these benefits. The maternity allowance is a new benefit. Under the old Acts maternity benefit consisted only of a lump sum payment of £2.

WIDOW'S PENSION (CONTRIBUTORY)

12. (*a*) A widow whose husband was an insured contributor under the old Widows' and Orphans' Pensions Scheme and who prior to his death had paid the requisite number of contributions was entitled to a pension. The amount of the pension was dependent upon three factors : (*a*) whether the deceased husband was an agricultural worker or not, (*b*) whether the widow resided in an urban or rural area, (*c*) whether the widow had children and if so how many. The distinctions as to district and occupation were also made for orphan's allowance. In both cases those distinctions are now abolished.

(*b*) Let us take a widow who previously was entitled to the highest rates ; that is, a widow of a non-agricultural worker resident in an urban area. If she had no child, the weekly pension was 16/– a week. If she had one child, the weekly pensions was 22/6*d.*, if she had two children, it was 28/–. Under the new scheme widows' pension is payable in all districts at the same rate of 24/– a week with an increase of 7/– a week for each of two children. The contribution conditions are that 156 contributions must have been paid for the husband in the period from his entry into insurance to the attainment of pensionable age or previous death, and that the yearly average of the contributions paid for or credited to him in the three (or in some cases the five) years preceding the relevant time (i.e. death or pensionable age of husband) is not less than 39.

ORPHAN'S ALLOWANCE

13. The rate of orphan's contributory pension under the old Acts varied from 7/6*d.* to a maximum of 10/– a week. The variations were due to the distinctions made between employment in urban and rural areas and between non-agricultural and agricultural employment. There is now a flat rate of 10/– a week for orphans' allowances. The only contribution condition for an orphan's' allowance is that 26 contributions have been paid for a parent or step-parent of the orphan. An orphan's allowance is paid to the guardian of the orphan ; but it may be paid instead to some other person for the benefit of the orphan.

MARRIAGE BENEFIT

14. Marriage benefit consists of a grant of £10. It is payable on marriage and then only to a female employed contributor. The number of contributions required to have been paid is 156 and 50 must have been paid or credited in the relevant contribution year. If the number of contributions paid or credited comes within the range 13 to 49 marriage benefit is payable at reduced rate depending on the actual number of such contributions.

TREATMENT BENEFIT

15. Under the name of Treatment Benefit the additional benefits that were provided under the National Health Insurance Scheme are being continued for the present by regulations under the new Act. It is expected, however, that benefits of this nature will be otherwise provided in due course.

FINANCIAL BASIS

16. A Social Insurance Fund has been set up for the purpose of the scheme consisting of a current account and an investment account. All assets and liabilities of the existing Funds have become assets and liabilities of the new Fund. The existing assets were substantial. All contributions paid by employers, employed contributors and

voluntary contributors will be paid into the Fund. In addition there will be payable to the Fund out of monies provided by the Oireachtas the amount by which the income of the Fund for any financial year is less than its expenditure. All the benefits paid under the Act are charged to the Fund. The cost of administration will be paid, not out of the Fund, but out of monies provided by the Oireachtas, but the Fund will pay to the Minister for Finance an appropriation in aid (Sec. 40 (2)).

DATE OF OPERATION

17. The 5th January 1953 was fixed by Order for the new schemes coming into operation. The Act, however, provided for increased rates of sickness and disablement benefit, of unemployment benefit and widows' and orphans' (contributory) pensions from July 1952. This was done by way of amendment of the old laws which were repealed from the coming into operation of the new scheme. The increased rates payable from July were, in general, those payable under the new scheme. The amendments of the old schemes also provided for increased contributions. These, however, did not become payable until 6th October 1952. Since that date there is but one Insurance Card for each insured person except a person in the Building Trade who will continue to use a Wet Time Book too.

B—ASSISTANCE SCHEMES

18. The provisions of the Social Welfare Act, 1952, dealing with Assistance make amendments in the following schemes :

Old Age Pensions (Part VI, Chapter II) ;

Unemployment Assistance (Part VI, Chapter V) ;

Widows' and Orphans' Non-Contributory Pensions (Part VI, Chapter VI (part)).

In a separate Act, the Social Welfare (Children's Allowances) Act, 1952, amendments were made in the scheme of Children's Allowances. The main purpose of

all these provisions was to bring into operation increased rates of assistance, though a number of other amendments were also made including in every case a provision giving the Minister power to alter the procedure for the determining of claims. In the case of Old Age Pensions, however, this power is confined to the procedure for determining appeals only. No large scale scheme of co-ordination or unification of assistance is attempted. A brief account of the provisions made under each head follows.

OLD AGE PENSIONS

19. The maximum rate of Old Age Pension was raised to 20/- a week by the Social Welfare Act, 1951, and the other rates were also stepped up. The Social Welfare Act, 1952, provides for increasing these rates by 1/6*d.* as from 4th July 1952. The maximum new rate is therefore 21/6*d.*

20. As from the 5th October 1951 the means scale for old age pensions was modified. Prior to that date a person whose means exceeded £52 5*s.* a year was not entitled to a pension. From October 1951 a person was not disqualified for an old age pension unless his means exceed £65 5*s.* The 1952 Act makes a further concession under this head. As from the 2nd January 1953 a person is not disqualified because of means unless they amount to over £104 15*s.* a year.

Prior to October 1951 a reduction in the rate of pension was made to any person whose means exceeded £15 12*s.* 6*d.* a year. From that date a reduction was not made in the maximum rate of pension unless the applicant's means exceed £22 2*s.* 6*d.* Under the Act as from the 2nd January 1953 no reduction is made in the maximum rate of pension unless the applicant's means exceed £52 10*s.* a year.

21. The main purpose of the Seventh Schedule of the Act is to consolidate the various provisions of the Old Age Pensions Acts and the Widows' and Orphans' Pensions Acts in relation to means. In addition, however, it introduces some relaxations. For example, in the Social

Welfare Act, 1951, it was provided that no account should be taken of assistance received by an applicant for an Old Age Pension from one or more charitable organisations except so far as such amount exceeded £52 5*s*. a year. In lieu of this provision a disregard is now provided for voluntary or gratuitous payments up to the same limit no matter from whom received.

22. In the Act the statutory conditions in relation to residence were modified in favour of applicants. The Act also empowers the Minister to make reciprocal arrangements with other countries.

Widows' and Orphans' (Non-Contributory) Pensions

23. The 1952 Act made substantial increases in the rates of widows' (con-contributory) and orphans' (non-contributory) pensions and relaxed the means test. Prior to July 1952 the maximum rates of widows' (non-contributory) pension were 14/– a week in the case of a widow resident in an urban area, and 10/– a week in the case of a widow resident in a rural area. The new rates under the Act for a widow is 20/– a week irrespective of area of residence. The old rates were payable where the means, after deducting certain exemptions applicable to particular means, were under 7/– a week or £18 4*s*. 0*d*. per annum. The Act provides for the payment of the maximum pension of 20/– a week where the means are £52 5*s*. 0*d*. per annum (just over 20/– a week). In the case of an orphan, the maximum rates were 8/– (urban area) and 6/– (rural area) a week. These have been increased to 10/– a week. An increase of 6/– a week will be paid for each of two children on the same conditions as in the case of the widow's (contributory) pension. The new pension rates became payable from the 4th July 1952.

Unemployment Assistance.

24. The Act made a series of amendments in relation to Unemployment Assistance. The principal of these prescribed increased rates of Unemployment Assistance. For example the weekly rate for a person without a

dependant resident in an urban area is increased from 16/– to 18/–. There were four types of district each with different rates. These have been reduced to two. Besides the level of means below which Unemployment Assistance is payable has been raised. If resident in an urban area an applicant is not disqualified unless his means exceed £98 16*s.*, as against £52 previously. If resident elsewhere he may not be disqualified unless his means exceed £72 16*s.*, as against £39 previously. The residence condition is also relaxed.

CHILDREN'S ALLOWANCES

25. The Social Welfare (Children's Allowances) Act, 1952, was passed for the following purposes :

(*a*) to increase the allowances payable under the Children's Allowances Acts and to make an allowance payable in respect of the second of two or more qualified children ;

(*b*) to make children's allowances payable by the calendar month instead of by the week ; and

(*c*) to abolish the system of qualifying dates, fixed payment periods and six-monthly renewal of claims and replace it by the system obtaining under the Widows' and Orphans' Pensions Acts of one original claim on which the decision made can be revised from time to time as occasion demands.

26. Under the Act children's allowances are from the 1st July 1952, payable at the rate of 11/– a month for the second qualified child in a family and 17/6*d.* a month for the third and each subsequent qualified child. Previously the allowances were at the rate of 2/6*d.* a week for the third and each subsequent qualified child. (Expressed as a weekly rate 11/– a month is slightly more than 2/6*d.* a week, and 17/6*d.* a month slightly more than 4/– a week.) Those increases apply to all persons qualified by having two or more qualified children normally resident with them. Persons who were already entitled to allowances as well

as persons newly qualified have benefited from the 1st July 1952.

27. With the passing of the previous system of qualifying dates and fixed payment periods the notional freezing of the position of the family as on a particular day no longer takes place. Changes in the family group of qualified children have now to be taken cognisance of as they occur. The effect of those provisions is to continue entitlement to an allowance only so long as the position which obtained when the allowance was granted or revised (as the case may be) remains unchanged. Births and deaths can be taken into account from the date of their occurrence.

C—ADMINISTRATION

28. Sir William Beveridge in his report on Social Insurance and Allied Services made unification of administrative responsibility one of the six fundamental principles in his scheme of social insurance against interruption and destruction of earning power which was the main feature of his Plan for Social Security. The main advantage claimed for this change was immensely improved efficiency and the possibility of economies through concentration of administrative machinery. The proposal included the setting up of a special Ministry through which unified responsibility for administration would be extended beyond social insurance to the sphere of assistance. He pointed out that the obtaining of the full advantages of co-ordination was inconsistent with the maintenance of the approved society system which gave unequal benefits for equal compulsory contributions. He also advocated the amalgamation of the special schemes of unemployment insurance for agriculture, banking and insurance with the general scheme of social insurance. Sir William Beveridge's report was published in 1942 and his main proposals with regard to administration were carried into effect some years later.

29. Unification of administration has been a gradual process in this country. It may be said to have begun with

the establishment of the unified National Health Insurance Society on 1st January 1934. It substituted one for 65 approved societies. Its objects were more or less the same as those later advanced for unification in Great Britain—efficiency and economy and the equalisation of benefits for all. It was also described as the first step towards a better health insurance scheme and as an essential preliminary to escape from the stagnation of the past.

30. The second major step in the unification of administrative responsibility was the establishment on 22nd January 1947 of the Department of Social Welfare. This was done under the Ministers and Secretaries (Amendment) Act, 1946. Beginning on that date a large number of services were transferred to the new Department. These included insurance schemes, assistance schemes and miscellaneous schemes. They were

Unemployment Insurance;
Intermittent Unemployment Insurance;
National Health Insurance.
Widows' and Orphans' Pensions;
Employment Exchanges;
Workmen's Compensation;
Old Age and Blind Pensions;
Blind Welfare;
Children's Allowances;
Home Assistance;
Miscellaneous Social Welfare Schemes, such as School Meals, Cheap Footwear, Cheap Fuel and the like.

31. The main objects in mind in establishing the Department of Social Welfare were to secure the co-ordination and more efficient administration of these schemes of Social Welfare and to provide an effective scaffolding for their development.

32. The third important step in unification of administration was the absorption by the Department of Social Welfare of the unified National Health Insurance Society. This was done under the Social Welfare Act, 1950. On 1st August of that year the society was dissolved and all

its functions transferred to the Minister for Social Welfare. The step was taken at that time so as to complete the clearing of the ground for the wider social security scheme that was being prepared.

33. The final step in the concentration of administrative machinery was provided for in Section 65 of the Social Welfare Act, 1952. The Insurance Industry Unemployment Insurance Scheme was wound up on and from the appointed day. This scheme was set up under the powers given to the Minister in Section 18 of the Unemployment Insurance Act, 1920, and under it the Insurance Industry ceased to be part of the general scheme of Unemployment Insurance. The Minister's power to approve such schemes was revoked in 1924, without prejudice to the continuance of any scheme already approved. The only scheme that had been approved was the Insurance Industry Special Scheme. The total number of persons insured under it at 30th June 1952 was 4,030, comprising 2,679 men, 38 boys, 1,288 women and 25 girls. The total number of these securing Unemployment Benefit at that date was 73. The scheme, therefore, was a comparatively small one.

34. In addition to concentration of administrative machinery co-ordination and simplification of procedure has been effected.

35. Under the Social Insurance Acts just repealed the method of deciding questions and disputes varied from scheme to scheme. Certain questions were decided by the Minister but there was an appeal to the High Court from his decisions. In certain other cases the Minister was the final Court of Appeal. Again there were appeals from determinations to Referees, but in some cases the Referees could only make recommendations whilst in other cases their decision was final. There were a number of other differences which need not be detailed here. Under the Social Welfare Act, 1952, a uniform procedure is prescribed for the determination of questions and disputes arising under the social insurance provisions of the Act. All questions arising on claims for benefit, disqualification for benefit, insurability, liability for payment of and rates of

contribution, voluntary insurance and on any other such matter as may be prescribed, are decided by Deciding Officers appointed by the Minister for Social Welfare. Any person dissatisfied with the decision of a Deciding Officer may appeal to an Appeals Officer. Power exists to appoint assessors to sit with the Appeals Officers either in particular cases or in particular classes of cases and for this purpose to constitute panels of assessors by districts or otherwise. Assessors are used in cases where Courts of Referees sat under the Unemployment Insurance Acts and members of the panels of Courts of Referees have been appointed to act as members of panels of assessors. Any person who is dissatisfied with the decision of an Appeals Officer on any question, other than a question arising on a claim for benefit or disqualification for benefit, may appeal therefrom to the High Court on any question of law. Provision is also made for the revision of decisions by a Deciding Officer or an Appeals Officer, when it appears that there has been a change of circumstances or that the original decision was erroneous in the light of new evidence or of new facts or for other such reason. With these reservations, however, the decision of an Appeals Officer is final.

36. Though this procedure is statutorily applied only to the scheme of social insurance embodied in the Act, power is given to the Minister to apply it in whole or part or with modifications to Unemployment Assistance, Widows' and Orphans' non-contributory Pensions, Children's Allowances, and in so far only as Appeals procedure is concerned, to Old Age Pensions. The Minister has exercised this power, so that with necessary modifications the procedure for determining claims is the same under both the Social Insurance and Social Assistance schemes.

The Factory Acts

By MISS B. STAFFORD

FORMERLY CHIEF INSPECTOR OF FACTORIES

The Factory Acts is the colloquial title of the very extensive series of laws framed for the protection of workers in factories and in similar industrial undertakings and dealing with sanitary conditions, overcrowding, ventilation, fencing of machinery, hours of work, holidays, fitness for employment at entry and, in general, all questions affecting the health, safety and welfare of industrial workers, having regard to the nature and conditions of their employment.

These statutory enactments include the Truck Acts 1831–1896, the Factory and Workshop Acts, 1901–1920, the Conditions of Employment Acts, 1936 and 1944, certain sections of the Public Health Acts and of the Workmen's Compensation Acts, the Night Work Bakeries Act, 1936, the Holidays (Employees) Act, 1939, and the Apprenticeship Act, 1931, as well as Part IV of the Industrial Relations Act, 1946, where the Committees established under these last mentioned Acts relate to workers employed in premises subject to the provisions of the Factory and Workshop Acts.

It will be observed that the Truck Act of 1831 dates from the early years of the nineteenth century and that the principal Factory and Workshop Act which is the Act of 1901 has been more than half a century on the Statute Book. There is, however, provision in the latter Act for the making of Statutory Regulations for dangerous or unhealthy trades, a provision which enables the conditions in all trades or industries—new or old—not only to be reviewed and supervised, but to be controlled and regulated in so far as health and safety are concerned by Statutory Orders, capable of bringing protective measures up to date. In so far as hours of work and periods of employment are concerned, there are similar provisions in the Conditions of Employment Act, 1936.

Truck Acts 1831–1896

The Truck Acts which played a very important part in the life of the worker in the nineteenth century and in the early years of the twentieth are still on the Statute Book in much the same form as they were introduced in the British Parliament. The principal Acts are those of 1831, 1874, 1887 and 1896. It had been a frequent practice of employers of labour to pay wages partly or wholly in kind and not in cash—in other works, instead of giving money, to give food, clothing or other articles of equivalent value. Such practices when honestly and reasonably carried out were not necessarily detrimental to the worker, but clearly the system was open to abuse. Frequently the employer was the proprietor of a shop or general store in which food, clothes, crockery, ironmongery, etc., were on sale. Sometimes these articles were of inferior quality and sometimes the prices charged were far in excess of their value. If a proportion of the worker's wages were paid in such goods, the worker suffered.

From the fifteenth century Acts were passed with the object of restricting this system in various trades. Finally in 1831, all these Acts relating to Truck were repealed and with a view to remedying the evil, a general Act was passed which provided that Workers' Wages must be paid in cash and not in kind. There is nothing, of course, to prevent an employer having a shop or store, in which his workers may deal if they wish and pay cash for the goods bought. The Act of 1887 extended the provisions of the 1831 Act to all persons engaged in manual labour except domestic servants. The Act of 1896 permitted deductions from wages as fines for misconduct or bad workmanship, provided the fines are fair and reasonable and that the worker had signed a contract agreeing to such deductions or that a notice containing the terms of such a contract was kept constantly affixed in a place where it can be easily seen, read and copied.

Inspectors of Factories are empowered to enforce the Truck Acts in factories and workshops and in any places

where work is given out by the occupier of a factory or workshop.

The Truck Acts are complicated, difficult to interpret and have given rise to many conflicting opinions but only Courts of Law can decide the meaning of the law. Fortunately, however, Truck and allied practices are now rare.

Factory and Workshop Acts, 1901–1920

The Factory and Workshop Act, 1901, which is the principal Factory Act deals with Health and Safety. It provides that factories and workshops must be kept clean, properly ventilated and not overcrowded. A reasonable temperature must be maintained, wet floors must be drained and proper and adequate sanitary conveniences provided. Important sections prescribe the fencing and safeguarding of dangerous machinery and of dangerous parts of machinery as well as the periodic examination of steam boilers and the means of escape in case of fire. The notification of accidents and of certain industrial diseases is compulsory, special conditions are imposed in specified industries and the procedure is prescribed for the making of Statutory Regulations for the protection of workers in dangerous or unhealthy industries. "Occupiers" of factories are compelled to obtain medical certificates of fitness for Employment of young persons under sixteen and the employment of women for a period of 4 weeks after childbirth is forbidden. In regard to Home Work, lists of out-workers must be kept and work in unwholesome premises or in premises in which there is infectious disease, is forbidden.

The Factory and Workshop Act of 1907 brought commercial laundries under the general law, i.e. laundries carried on by way of trade or for the purpose of gain or carried on as ancillary to another business, e.g. a laundry attached to a shirt and collar factory, or to the purposes of any public institution.

The Employment of Women Act, 1907, brought the Factory law regarding the employment of women in certain Flax Scutch Mills into conformity with the provisions of the Berne Convention of 1906.

The White Phosphorous Matches Prohibition Act, 1908, prohibits the use of white or yellow phosphorous in the manufacture of matches, and the sale or importation of matches so made.

The Factory and Workshop (cotton Cloth Factories) Act, 1911, deals with special Regulations applicable to such factories.

The Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, provides for the making of Orders known as Welfare Orders compelling occupiers of factories and workshops to make provision for the health and comfort of workers on the same general lines as the provision made for their safety is made by Regulations for Dangerous trades.

The Women and Young Persons (Employment in Lead Processes) Act, 1920, was passed to give effect to an International Labour Convention controlling the employment of Women and Young Persons in certain processes involving the use of lead compounds and is included in the citation Factory and Workshop Acts, 1901–1920.

The Factory and Workshop Acts apply to factories and workshops, a factory being a place where a manufacturing process is carried on with the aid of mechanical power and a workshop a similar place without " power." There are, however, certain places classed as factories where power is not used. Furthermore factories are classified as Textile and Non-textile, a distinction reminiscent of the days when Factory legislation was confined to Textile Industries such as spinning and weaving factories. From the mid-eighties, however, non-textile factories were gradually brought within scope and the provisions of the Acts of 1901 to 1920 were extended to cover Laundries, Docks, Warehouses, certain buildings and building operations and places where work is done by out-workers.

In regard to the classes of persons covered the only parts of the Acts applicable to adult men are those relating to Health and Safety, such as cleanliness, ventilation, fencing of machinery, means of escape in case of fire and regulations for dangerous trades. Women and Young Persons received

the protection not only of these general provisions, but their working hours, overtime, mealtimes and holidays were also controlled under these Acts.

Conditions of Employment Acts, 1936 and 1944

The Conditions of Employment Act, 1936, was, as is stated in its subtitle, an Act to make better provision for regulating and controlling the conditions of employment of workers engaged in industrial work. It has been amended as indicated below by the Conditions of Employment Act, 1944. The radical changes in Factory Law effected by these Acts are in respect of scope, hours of work, overtime, shift work, public holidays, and Annual Leave with Pay, provisions applicable to adult men as well as to women and young persons.

The scope of the application of the Acts is considerably wider than the scope of the Factory and Workshop Acts, for it includes not only those premises and workers that come under the Factory Acts, but all " industrial work." " Industrial work " which is defined, " does not include agricultural, commercial nor domestic work, nor mining, nor fishing nor the transport of persons or goods. . . ." The Act of 1936 specifically includes as " industrial work," the construction, reconstruction, maintenance, repair, alteration, demolition of any railway, tramway, harbour, pier, canal, road, tunnel, bridge, electrical undertaking, gas work, etc., as well as the production and distribution of gas, the generation, transformation and transmission of electricity and many other forms of industrial work.

The hours of work of adult men, women and young persons are controlled. The daily and weekly hours of work for men and women are the same, viz. a maximum of 9 hours per day and 48 hours per week ending at 8 p.m. on ordinary week days and 1 p.m. on the Short Day, and in the case of women not commencing before 8 a.m. For Young Persons an Eight hour day and a Forty hour week is prescribed. In all cases, however, overtime is allowable, subject to the restrictions imposed on Women and Young Persons, prohibiting night work.

Overtime may be worked to a limit of 2 hours in any day, or 12 in any week or 240 in any year or 36 in any period of 4 consecutive weeks. In the case of Young Persons, the Overtime limits are 2 hours on any ordinary day, one hour on any short day, 10 hours in any week, 200 in any year or 30 in any period of 4 consecutive weeks. Overtime must be paid for at not less than Time and a Quarter.

Shift work (other than in or about the printing or publishing of newspapers) is forbidden unless :—

(*a*) a continuous process normally requires to be carried on without intermission, or for periods of not less than 15 hours at a time without intermission, or

(*b*) a shift work licence is granted by the Minister for Industry and Commerce.

As regards the employment of workers on continuous process shift work no worker may work for more than 56 hours in any week and no shift may be longer than 9 hours in duration. He may not work on two consecutive shifts or work on any shift unless at least 8 hours have elapsed since he worked on a previous shift. In licensed shift work, the average number of hours worked in a period of three consecutive weeks must not exceed 48 per week, otherwise the conditions set out above and those, if any, contained in the licence authorising shift work, are applicable to this kind of work. Every worker on shift work must be allowed at least 15 minutes rest in each shift.

Public Holidays and Leave

Six public holidays are fixed by the Act : (1) Christmas Day (or when it falls on Sunday, Tuesday the 27th December) ; (2) St. Stephen's Day (or when it falls on Sunday the next Monday) ; (3) St. Patrick's Day (or when it falls on Sunday, the next Monday) ; (4) Easter Monday ; (5) Whit Monday ; (6) the first Monday in August.

On giving not less than one month's notice in writing the employer may substitute one of other days named (not being a Sunday) in each case for St. Stephen's Day, Easter Monday, Whit Monday, and the first Monday in August.

Such substituted day must be a public holiday for all workers in the employment of the particular employer.

Where employment is prohibited on public holidays the worker is entitled under defined conditions to one day's pay for each such holiday. Where employment is not prohibited and where the worker has worked for his employer on that day, the worker is entitled to Time and a Quarter.

Employment of workers is prohibited on Sundays save in certain specified industries, e.g. printing or publishing of newspapers, creameries, etc. Where a worker is employed on Sunday, in any of these forms of industrial work, the worker must be allowed 24 consecutive hours of rest before the next Sunday. In all other forms of industrial work an employer may employ an adult male worker for not more than 3 hours on a Sunday.

The right of the industrial worker to annual leave with pay first introduced by the Act of 1936 was later embodied in the Holidays (Employees) Act, 1939. An adult worker who has worked for not less than 1,800 hours in any complete employment year (1,500 in the case of a Young Person) is entitled to seven consecutive days of leave with pay, which in the case of a time worker is represented by the amount which such worker received from his employer as salary or wages in respect of the week preceding such annual leave during which he worked the normal number of hours on the normal maximum number of days. In the case of a worker not paid by time, a sum equal to the amount of his average weekly earnings over a period of six months. There is provision for broken time.

Other Conditions of Employment

No worker may be employed on day work for a period exceeding 5 hours in any day without an interval of at least half an hour. This will be the interval for all workers on the premises unless some other arrangement is permitted by the Minister. During an interval of work no worker must be allowed to remain in any premises while industrial work is being done there.

Saturday is the short day for every industrial under-

taking, but provision is made for the substitution of another day of the week (excepting Sunday) on notice on the prescribed form being given by the employer to the Minister.

The Act of 1936 continues the prohibition of employment of boys and girls under the age of 14 and prescribes the proof of age required for the employment of any young person between the ages of 14 and 18. It also continues the prohibition of the Employment of Young Persons at night save in those industries specified in the relevant International Labour Convention of 1920. These industries include the manufacture of glass, paper and raw sugar.

For the purpose of the execution of the Conditions of Employment Act, 1936, an Inspector is a person who is an Inspector for the purpose of the Factory and Workshop Act, 1901, and has power to do all or any of the things which an Inspector has power to do for the purpose of the execution of the Factory and Workshop Act, 1901, and for the purpose of the exercise of such powers every place in which any industrial work is carried on is deemed to be a factory within the meaning of that Act.

A prosecution for any offence under any Section of the Conditions of Employment Act, 1936, committed by an employer may be brought at the suit of the worker affected, or of any official of a Trade Union of which the worker is a member. A prosecution may also be brought at the suit of the Minister. As in the case of prosecutions under the Factory and Workshop Acts, prosecutions under the conditions of Employment Act are reported in the Irish Trade Journal, issued quarterly by the Department of Industry and Commerce.

The effect of the Conditions of Employment Act, 1944, is to :—

(*a*) exclude " fishing " from the definition of " industrial work."

(*b*) add the right of a Trade Union official to prosecute.

(*c*) nullify any claim for Overtime over 48 hours per week by a continuous process shift worker working a 56 hour week.

Under the Factory and Workshop Acts and Conditions

of Employment Acts, certain Abstracts of the Acts and forms must be exhibited in the places subject to these Acts and kept available for inspection by an authorised Inspector. These include a Factory Register, which *inter alia*, should give the names of the Young Persons under 16 years of age employed in the Factory and the certificate of medical fitness signed by the certifying surgeon, a medical practitioner appointed by the Minister for Industry and Commerce for a specified District, whose duties include the medical examination of Young Persons under 16 for their fitness for employment in a factory.

THE APPRENTICESHIP ACT, 1931

This Act passed in 1931 was for the purpose of regulating Apprenticeship by means of Rules adopted by committees consisting of an equal number of representatives of employers and of workers in the designated trade under the Chairmanship of an independent person appointed by the Minister. It is mandatory on such Committees to make Rules governing the registration of apprentices, the class of employment constituting apprenticeship, the period of apprenticeship, the minimum rate of wages and maximum hours of work. The Committees *may* make other Rules, such as Rules governing educational qualifications, age of entry, ratio of apprentices to skilled workers, etc., but there is no provision in the Act for a test of competence, on the completion of apprenticeship. There are only four trades in which Apprenticeship is governed by the Rules of an Apprenticeship Committee, viz., Brush and Broom, Furniture, Housepainting and Hairdressing. Although the Act has been found difficult to operate successfully, the Youth Unemployment Commission recommended that Apprenticeship Committees be established for those occupations to which the Act may suitably be applied, that it be mandatory on them to make Rules as to educational qualifications, age of entry, training and instruction, that there should be no bar to entry save physical unfitness or lack of educational qualifications, that a test of competence should be a condition for recognition as a tradesman.

Industrial Relations Act, 1946

Joint Labour Committees

The Joint Labour Committees established under the Industrial Relations Act, 1946, have much wider powers than the powers of the Trade Boards which they replaced. The constitution of the Committees and of the Boards is similar, the basic idea being that the regulation of the conditions of employment in a trade or industry—wages, hours, holidays—should be a matter for a tripartite body consisting of an equal number of representatives of employers and workers in that trade or industry with an independent Chairman, who might be assisted by one or more " appointed " members, the findings and decisions of these bodies, when confirmed by the Minister in the Case of Trade Boards and by the Labour Court in the case of the Joint Labour Committees to have statutory effect and to be enforceable by State Inspectors.

These Committees had up to 1950 made Employment Regulation Orders entitling workers in eleven trades to an annual holiday of one fortnight with pay, i.e. double the annual leave to which industrial workers are entitled under the Holidays (Employees) Act, 1939. The eleven trades include Button Making, Tailoring, Sugar Confectionery, Aerated Waters, Paper Box and Shirtmaking.

Enforcement of the Factory and Workshop Acts and Other Allied Acts

Administration : The appointment, powers and duties of Inspectors of Factories are set out in detail in Sections 118 et seq. of the Act of 1901. The Minister for Industry and Commerce with the approval of the Minister for Finance may appoint such Inspectors, now called Industrial Inspectors, as he considers necessary for the execution of the Acts and may assign to them their duties. Notice of appointment of every Inspector must be gazetted, but any person who is the occupier of a factory or workshop or is directly or indirectly interested therein or in a patent connected therewith or is employed in or about a factory or workshop may not be appointed as an Inspector.

An Inspector has, *inter alia*, the following powers :—

(1) " To enter, inspect and examine at all reasonable times, by day and night, a factory and a workshop and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and

(2) " To require the production of the registers, certificates, notices and documents kept in pursuance of this Act and to inspect, examine and copy the same ; and

(3) " To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein ; and

(4) " To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop or whom he has reasonable cause to believe to be or to have been within the preceding two months, employed in a factory or workshop and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined ; and

(5) " To exercise such other powers as may be necessary for carrying this Act into effect."

An Inspector, irrespective of whether he is a Counsel or Solicitor or law agent may conduct prosecutions in a court of Summary Jurisdiction. An Inspector must be furnished with the prescribed certificate of his appointment and on applying for admission to a factory or workshop, shall, if so required, produce the certificate to the occupier. Particulars of prosecutions under these Acts are published in the Irish Trade Journal, issued quarterly by the Department of Industry and Commerce. Each case is given under a serial No. The name of the occupier is not given.

International Labour Conventions and Recommendations

Certain International Agreements deal directly with what is usually termed Factory Inspection. When in September 1923 Ireland or the Irish Free State, as she then was, was admitted to the League of Nations, she became automatically a member of the International Labour Organisation and was represented at the Fifth Session of the International Labour Conference, by a tripartite Delegation representing the Government, Employers and Workers. The principal item on the Agenda was a proposal for a draft Recommendation concerning the General Principles for the Organisation of systems of Inspection to secure the enforcement of the Laws and Regulations for the protection of Workers. The Irish representatives took an active part in the discussions and the Labour Inspection Recommendation then adopted was later formally accepted by the Government. This Recommendation formed the basis of the Labour Inspection Convention (No. 81) adopted at the thirtieth session of the Conference in 1947. This Convention which has now been ratified by 16 States, including Austria, Bulgaria, India, Norway, Sweden, Switzerland, the United Kingdom and Finland provides, *inter alia*, that

"The functions of the Systems of Labour Inspection shall be :—

(*a*) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors ;

(*b*) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions ;

(*c*) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

The acid test of the effectiveness of legislation lies in its enforcement. This is particularly true of Labour laws for the protection of workers in factories. In fact it might be said that the successful administration of the Factory Acts depends on an effective system of Factory Inspection staffed by an adequate number of trained and qualified Inspectors, a system based on and in harmony with the International Labour Convention of 1947.

Irish Trade Union Law

By R. J. P. MORTISHED

FORMERLY CHAIRMAN OF THE LABOUR COURT

(This paper is a revised version of a lecture given on 13th November, 1951 to students of public administration and the social sciences attending lectures organised by the Civics Institute.)

This is not a paper on law by a lawyer for lawyers. The author is not a lawyer, and even if he were it would be impossible for him to give in the compass of a short paper anything more than the merest sketch of an exposition of an intricate, complicated and difficult branch of law. What is here attempted is to give enough of an indication of the main features of the law relating to trade unions to indicate the effect of the law on the practical working of unions, leaving the details to be studied in the text-books, and then to use this sketch for the main purpose of considering to what extent we have now developed a distinctively *Irish* trade union law—a subject on which there appears to be no text-book available. Some references are made to Northern Ireland, but the paper is concerned primarily with the law as it stands in the Republic.

SOURCES OF IRISH TRADE UNION LAW

Irish trade union law is constituted of the law as it was in the United Kingdom up to the time of the severance between the two countries in 1922 with the modifications effected by our Constitution, by our own enactments (principally the Trade Union Act, 1941), and by the judgments of our Courts, including particularly those of the High Court in 1935 in the action of the Irish Transport and General Workers' Union versus the Amalgamated Transport and General Workers' Union and of the Supreme Court in the action of the National Union of Railwaymen and others versus O'Sullivan and others [1947] I.R.77.

British (or rather United Kingdom) law as it stood in

1922 and as it was carried over here when this State was established, can be studied in detail in the standard text-books.[1] Trade unions in these islands have had a long and painful history, and as a result British trade union law is an intricate mixture of common law, judge-made law and statute law; it is a series of negations rather than of affirmations, designed to make possible the operation of bodies which the law—if one may personify it—really feels in its heart of hearts to be engaged in illegal, or at best extra-legal, activities but which it has been reluctantly and suspiciously obliged to tolerate and sometimes to facilitate. The first part of Citrine's manual deals in its author's words, " with the history of the law and discusses the two legal doctrines which are fundamental to the subject, namely, restraint of trade and conspiracy "—and that indicates the notion of illegality that still flavours or taints the whole subject.

The Law and the Constitution

The untidiness and incoherence of British trade union law may be distasteful to an orderly-minded layman and create difficulties for the student and the lawyer, but in actual practice the system does work and those who are directly concerned do know generally where they stand under the law, though quite a number of special points present difficulties. That is certainly true in the United Kingdom. It is not so certainly true in this country. We have carried over British law, but we have also adopted a written Constitution. Article 40 (6) of the Constitution declares that :

> The State guarantees liberty for the exercise of the following rights, subject to public order and morality . . . (iii) The right of the citizens to form associations and unions. Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

[1] It may be useful to give details of some recent text-books :—
Outlines of Industrial Law (Chapter 11). By W. Mansfield Cooper. Butterworth, London, 1947.
Industrial Law (Chapter 7). By H. Samuels. Pitman, London, 1949.
The Law of Trade Unions. By H. Samuels. Stevens, London, 1949.
Trade Union Law. By N. A. Citrine. Stevens, London, 1950.

Notice that this wording does not refer specifically to trade unions; it refers to unions and associations of any kind and does not confer any special privilege on trade unions as such. But, of course, it does include trade unions and does guarantee, within limits, the right of forming trade unions. It would seem, therefore, that we have taken over a body of law which is still based, at least in part, on a presumption that there is something dubiously lawful about trade unions and superimposed on it a constitutional guarantee of the right to form trade unions. Whether there is here any conflict or contradiction, and whether all pre-existing (British) law is covered by the two provisos in the Constitution—" subject to public order and morality " and " laws may be enacted for the regulation and control in the public interest of the exercise of the right " to form trade unions—these are questions which might be of at least academic interest to students of Irish law.

Domestic and Foreign Trade Unions

One other aspect of trade union law as affected by the change in the political status of this country may be mentioned here. There does not appear to be in any British statute any specific mention of a trade union established and controlled outside the United Kingdom and operating within the Kingdom, nor even an incidental reference to such a union in any text-book. If a French trade union were to operate in the United Kingdom on behalf of members resident there those members would presumably be regarded by British law as constituting an unregistered trade union, but it is unlikely that this situation has ever occurred in practice.[1] It is certainly possible for a trade union established here to operate in the Northern Ireland part of the United Kingdom, for this actually occurs (e.g. Irish Transport and General Workers' Union; Irish National Teachers'

[1] A trade union for foreign seafarers was formed in London during the recent war by members of a number of foreign unions under the auspices of the International Transport Workers' Federation and with the help of the British seafarers' unions; but the circumstances were, of course, exceptional and no-one was likely to be much concerned over legal difficulties, even if any were to arise.

Organisation), and the possibility is recognised, with certain restrictions in the Trade Disputes and Trade Unions Act (Northern Ireland), 1927 (s. 8). What is important to note is that British trade union legislation up to 1922 made no specific provision for dealing with a union established outside the United Kingdom and that consequently Irish trade union law, so far as it was British law taken over and applied here, also made no specific provision for dealing with a union established outside Ireland (the Twenty-six Counties). There are, of course, many unions established outside Ireland and operating here, so that we have been faced with a question of practical, and not merely academic, interest. As will be seen later, the problem has been tackled, but not yet finally solved.

OBJECTS AND STATUS OF TRADE UNIONS

Definition of a Trade Union

Apart from the constitutional guarantee of freedom of association, the basis and starting point for the study of Irish trade union law may be taken as the (British) Trade Union Act, 1871, as amended by Acts of 1876 and 1913. These Acts define a trade union as being (subject to two provisos of no importance for our present purpose)—

> any combination, whether temporary or permanent, the *principal* objects of which are, under its constitution :—
>
> the regulation of the relations between workmen and masters,
> or between workmen and workmen,
> or between masters and masters,
> or the imposing of restrictive conditions on the conduct of any trade or business ;
> and also the provision of benefits to members ;[1]

[1] The word " benefits " in this definition is not itself defined. The clause was added by the Trade Union Act, 1913. It does not mean that the provision of benefits must be included among the objects of a union in order to make it a trade union ; " the sub-section must be read as including an additional object which may or may not be combined with one of those previously enumerated." (Bankes, L. J., in *Performing Right Society* v. *London Theatre of Varieties* (1922, 2 K.B., p. 444.))

whether such combination would or would not, if the Trade Union Act, 1871, had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

It will be seen that a combination of employers (including companies as well as individuals) can be a trade union, and not merely a combination of employees, and indeed a combination of employers and employees together could be a trade union. It is interesting to note also, in passing, that the definition includes within its scope bodies which would not in ordinary usage be regarded as trade unions at all; for example, an association of manufacturers formed to regulate prices, restrict output, and provide for the pooling of profits from excess output may be a trade union. For our present purpose it is of more interest to note that the Congress of Irish Unions and the Irish Trade Union Congress, which are federations of trade unions, are not themselves trade unions as at present constituted, though they could become trade unions by altering their constitutions. On the other hand, the Federated Union of Employers, which is a federation of employers and employers' association, is itself a trade union.

This British definition of a trade union still applies here, but it will be seen later that the definition now effective here for practical purposes is much more restrictive.

Partial Legalisation of Trade Unions

The primary purpose of the Act of 1871 was to relieve trade unions of certain civil and criminal disabilities from which they had suffered. Before the Act was passed, if a trade union's objects were against public policy as being in unreasonable restraint of trade the trade union was an illegal body and its members might be liable to prosecution for criminal conspiracy. The Act of 1871 declared that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise." Trade unions were thus partially legalised, but

they were still left under certain legal disabilities. Section 4 of the 1871 Act provided that certain agreements should not be directly enforceable by legal proceedings, though the agreements were not made unlawful. The agreements mentioned are—

(1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed.

(2) Any agreement for the payment by any person of any subscription or penalty to a trade union.

(3) Any agreement for the application of the funds of a trade union :—

(*a*) to provide benefits to members ; or

(*b*) to furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or

(*c*) to discharge any fine imposed upon any person by sentence of a court of justice.

(4) Any agreement made between one trade union and another.

(5) Any bond to secure the performance of any of the above-mentioned agreements.

It is, of course, essential to the ordinary working of a trade union that its members should have come to some agreement on at least the first three of the seven matters in this list. It is now generally considered necessary or desirable that trade unions should be able to operate. Is it not illogical then, that the law should make it impossible to enforce by legal proceedings agreements which are indispensable to the operation of unions ? Illogical it may be, but there have been two very practical reasons for it—the enormous volume of work that might be thrown upon the courts if legal proceedings could be taken, and the preference of the

trade unions themselves in favour of remaining entirely voluntary organisations, enforcing their own discipline without recourse to the courts. Hence the continued discrimination against trade union agreements as compared with other kinds of agreement. It should be added that the Act of 1871 does not entirely exclude the jurisdiction of the Courts. Thus, legal proceedings have been taken by members of trade unions to prevent the payment of strike pay otherwise than in accordance with the rules, and to prevent the union making a levy for a purpose not authorised by the rules. But it would be quite impossible, within the compass of this paper, to consider the effect of section 4 of the Act of 1871 in detail, and the student must be referred to the text-books. Paragraphs (4) and (5) in the list of unenforceable agreements, however, merit special consideration.

By paragraph 5 a trade union cannot take legal proceedings to enforce a bond to secure the performance of any of the other agreements mentioned in this section. The text-books say that there do not appear to have been any decided cases on this paragraph, and I have not myself ever heard of an instance in these islands in which members of a trade union entered into a bond as a guarantee that they would carry out the decisions of the union. But in Sweden employers who become members of the national employers' organisation do put themselves under bond to the organisation in quite substantial sums of money, and if a member fails to abide by the decisions of the organisation his bond is forfeit. Obviously this is a very convenient and effective method of ensuring the solidarity and united action by its membership that every trade union desires, and indeed requires if it is to be fully effective. It would be particularly appropriate for employers' trade unions, for apart from any legal question bonds entered into by members of a workers' union could hardly be enforced in practice. But even if our Federated Union of Employers were to require bonds of this kind from its members, section 4 of the Act of 1871 would apparently debar it from enforcing them by legal proceedings.

Paragraph 4 of this section prevents direct enforcement

by legal proceedings of agreements between unions, but it is now possible to invoke the aid of the law, under certain conditions, to secure the carrying out of an agreement between an employers' trade union and a workers' trade union concerning conditions of employment. This is made possible by Part III of the Industrial Relations Act, 1946, concerning which reference may be made to the paper on that Act which the Institute has published in Volume II of *Public Administration in Ireland*.[1]

Registered and Unregistered Trade Unions

The second purpose of the Act of 1871 was to provide for the registration of trade unions. The Act did not make registration compulsory; ever since 1871 there have always been many unregistered trade unions and in recent years the number in this country has increased considerably as a result of an involuntary change in the status of certain registered unions. Registration confers certain advantages, mainly in regard to income tax, the control of property and the conduct of legal proceedings. These advantages are matters of convenience and are not of any very great importance; a trade union can carry on its work quite effectively even though it is not registered. On the other hand, registration carries with it certain obligations, which again are not very onerous. A registered union must have rules dealing with certain specified matters, it must lodge with the Registrar of Trade Unions its original rules and any later amendments thereto, it must maintain a registered office, and it must send to the Registrar an annual return of its assets, liabilities, income and expenditure and of the number of its members.

The registration provisions of the Act of 1871 were amended by the Trade Union Act, 1876. In particular, the later Act provided that a registered trade union operating in more that one of the three countries—England, Scotland and Ireland—then constituting the United Kingdom should be registered in the country in which its registered office

[1] The French Law No. 46-2924 of 23 December 1946 may be cited as an example of legislation providing for direct recourse to a court of law by way of an action for damages for breach of a collective agreement.

was situate, but that it should send copies of its rules to the Registrar of any of the other countries in which it wished to operate; the Registrar would record them, and until the rules had been so recorded the union would be treated as an unregistered union in the other country or countries.

What happened when this country ceased to be a part of the United Kingdom? This question was settled in 1936 by the judgment of Mr. Justice Meredith in the action of the Irish Transport and General Workers' Union versus the Amalgamated Transport and General Workers' Union ([1936] I.R. 471). This gave "a declaration to the effect that the recording in the Registry of Trade Unions in Saorstát Eireann of the Rules of the Transport and General Workers' Union or of the Amalgamated Transport and General Workers' Union, or of any amendment of the said Rules, is inoperative and of no legal effect." The present position is, therefore, that what are commonly but inexactly called here "amalgamated unions," that is, unions with headquarters outside this country, are under our law unregistered unions, even though they may be registered in England or Scotland.[1]

Certified Trade Unions

There is yet another class of trade unions. Under the Trade Union Act, 1913, s. 2 (3), an unregistered trade union may apply to the Registrar for a certificate that the union is a trade union within the meaning of the Acts. The certificate does not confer any special advantages or impose any obligations on an unregistered union; it merely provides conclusive evidence that the union is a trade union.[2]

[1] The distinction between registered and unregistered trade unions should be borne in mind in examining the annual reports of the Registrar of Friendly Societies who is also the Registrar of Trade Unions. The latest report (for 1949) shows that there were 108 unions on the Register at the end of 1948—53 employers' associations and 55 workers' unions, with memberships respectively of about 12,000 and 193,000; but these returns relate only to registered unions and therefore do not show the strength of trade unionism in this country.

[2] There were three such certified trade unions at the end of 1949: the Tobacco Trade Guardian Society, the Electricity Supply Board Staff Association, and the Irish Nurses' Union.

Authorised Trade Unions

The latest—and in some ways most important—definition of trade unions is that given in the Trade Union Act, 1941. An " authorised trade union " under this Act (s. 7) is a trade union which (*a*) either is registered in this country under the Trade Union Acts or is a trade union, registered or unregistered, under the law of another country in which its headquarters control is situated, and which (*b*) deposits a substantial sum of money with the High Court. The amount of the deposit depends on the membership—a minimum of £1,000 if the membership does not exceed 500 and a maximum of £10,000 for a membership of 30,000 or more; but, first as a war emergency measure under section 8 of the Act of 1941, and subsequently by the Trade Union Act of 1947, re-enacted annually since, the Minister may reduce the amount of the required deposit, for a period of not more than a year at a time, to such an extent not exceeding 75 per cent. as he thinks proper.[1] If the conditions are fulfilled, the Minister must issue the licence; he has no discretionary power to withhold a licence.[2]

Subject to certain exceptions (set out in s. 6 of the 1941 Act as amended by the Act of 1942) only an authorised trade union holding a negotiation licence is permitted to carry on negotiations for the fixing of wages or other conditions of employment. The carrying on of such negotiations is, of course, the essential purpose of a trade union as ordinarily understood. Consequently, while the definition of a trade union under British law still holds good in this country, it can be said that—subject to certain qualifications—for the essential *practical* purposes a trade

[1] This concession applies only to *registered* unions; an unregistered union (all " amalgamated " unions are unregistered here) or a certified trade union is not entitled to it. The concession has been granted to 24 unions, of which 4 are employers' unions.

[2] The licence is in the following form:

> The Minister for Industry & Commerce, in exercise of the powers conferred on him by the Trade Union Act, 1941 (No. 22 of 1941), and of every and any other power him in this behalf enabling, hereby authorises the body specified in the Schedule to this licence to carry on negotiations for the fixing of wages or other conditions of employment.

union under Irish law is a body registered as such in this country or recognised as such, whether registered or unregistered, under the law of another country (in effect, of the United Kingdom, including Northern Ireland) which has deposited the statutory sum of money with the High Court and has been granted a negotiation licence by the Minister for Industry and Commerce. It will be seen that the position in this country is very different now from what it was when we were still part of the United Kingdom and from what it still is in the United Kingdom.

ACTIVITIES OF TRADE UNIONS

Subsidiary Activities

A trade union may do a great many things without experiencing any serious difficulties with the law. If its rules so provide, it can engage in the provision of what are usually called " provident benefits " or " friendly benefits " —for example, a modest form of insurance against unemployment, sickness, old age, death—and here the law gives positive assistance by granting certain facilities and exemptions from certain requirements imposed on insurance undertakings. A union may publish a journal and provide educational, recreational and cultural facilities for its members—activities which may be of very great value. A Union may acquire property for any of its purposes and registered unions and their branches are expressly authorised to own land; the Act of 1871 limited the area of land which could be bought or leased to one acre but this limitation was removed by our Trade Union Act of 1935.

A trade union, whether registered or unregistered, may also engage in political activities, but in that case it is subject to all the requirements of the Trade Union Act, 1913. The adoption of political objects must be approved by a majority of the members on a special ballot, special rules dealing with political activities must be adopted and approved by the Registrar, a special political fund must

be set up, and any member who desires to do so must be enabled to "contract out" of making any payment into this fund.[1]

Restriction of Negotiations

All these objects, however, are merely subsidiary to the principal objects of the union, which must be the regulation of the relations between workmen and masters, etc., as set out in the definition quoted earlier. The first step towards such regulation is, of course, an agreement between the members of the union themselves on what the relations ought to be. This in itself is not necessarily unlawful and even in circumstances in which it might have been held to be unlawful before 1871 it is now covered by the Act of 1871. The next step is to enter into negotiations with employers (or, in the case of employers, with workers) with a view to securing their assent, and here the activities of unions are severely restricted by the Trade Union Act, 1941.

The "Right" to Negotiate

Considerable misconception is current about an assumed "right to negotiate." It is often asserted that the constitutional guarantee of the right to form unions carries with it a guarantee of a right to negotiate. So far as the law is concerned (moral right and public policy are, of course, separate questions which are not under discussion here), there does not appear to be any foundation for this assertion. The exercise of the right to form unions is given by the Constitution the same guarantee as the exercise of the right of free expression of opinion; the two matters are dealt with in the same Article. We have a guaranteed right to speak freely, but no guarantee that anybody will listen to what we say. So also we have a guaranteed right to form unions, but no guarantee that our unions will be

[1] In the United Kingdom "contracting in" was substituted for "contracting out" by the Trade Disputes and Trade Unions Act, 1927, which of course never applied to the Twenty-Six Counties and has since been repealed in respect of Great Britain. In Northern Ireland, however, "contracting in" is still required under the Trade Disputes and Trade Unions Act (Northern Ireland), 1927.

able to enter into negotiations with anybody. Just as it takes two to make a quarrel, so it takes two to negotiate, and the only way to guarantee to one party the right to negotiate is to compel the other party to enter into negotiations. There is no such compulsion in our law. We have nothing comparable with, for example, the provisions of the Industrial Relations and Disputes Investigation Act, 1948, of Canada. When a Canadian trade union has been certified, by a Labour Relations Board constituted much like our Labour Court, as the bargaining agent for a particular body of employees, such as the staff, or a section of the staff, of a particular undertaking, it can *require* their employer to commence collective bargaining ; the employer or employer's organisation has a similar right ; and failure by one party to comply with the requirement of the other entails a penalty.

Not only have we no guarantee of the right to negotiate, we have a definite restriction of the right to negotiate in the Trade Union Act, 1941, and the amending Acts of 1942, 1947 and later years.

Section 6 (1) of the Act of 1941 declares that " it shall not be lawful for any body of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiation licence." The excepted bodies are specified in section 6 (3) of the 1941 Act as amended by by the Act of 1942 and are—

(i) a body which carries on negotiations for the fixing of the wages or other conditions of employment of its own (but no other) employees ;

(ii) a body all the members of which are employed by the same employer and which carries on negotiations for the fixing of wages or other conditions of employment of its own members (but of no other employees) ;

(iii) a civil service staff association recognised by the the Minister for Finance ;

(iv) an organisation of teachers recognised by the Minister for Education ;

(v) the Agricultural Wages Board; and committees established under the Agricultural Wages Act, 1936;

(vi) a Joint Labour Committee operating under the Industrial Relations Act, 1946;

(vii) an apprenticeship committee established under the Apprenticeship Act, 1931;

(viii) a joint industrial council, conciliation or arbitration board or similar body which is recognised by the Minister;

(ix) a body which has been excepted from the application of the section by an order of the Minister for Industry and Commerce.[1]

With these exceptions, it is unlawful for a trade union to carry on negotiations unless it holds a negotiation licence issued by the Minister for Industry and Commerce. In order to obtain a licence the union must be an " authorised trade union," that is to say, it must be a trade union registered here or, if unregistered, recognised as a trade union under the law of another country in which its headquarters control is situated, and it must have deposited the required sum of money with the High Court.

The issue of this licence makes it lawful for a workers' organisation to carry on negotiations with an employer or employers' organisation, or for an employers' organisation to carry on negotiations with a workers' organisation, but it does not *require* either to negotiate with the other.

Penalties

These restrictions on negotiation are enforced by penalties of two kinds. The first penalty (the second will be discussed later) is imposed by section 6 (2) of the Act of 1941, which provides that if " any body of persons " negotiates without having the requisite licence " the members of the committee of management or other controlling authority of such body and such of the officers of such body as consent to or facilitate such act " are guilty of an offence and liable on summary conviction to a fine not exceeding £10 together with a

[1] Only one such order has been made.

further fine not exceeding £1 a day for a continuing offence.

The wording of this provision is not without obscurity. The references to a committee of management and to officers imply that the " body of persons " is a body with some degree of organisation and permanence, and they are appropriate in relation to a trade union, whether of employers or of workers. But suppose that two or more individual employers come together and negotiate with a trade union about the conditions of employment of the workers they employ. Does such an occasional grouping of employers constitute " a body of persons " ? If it does, then the employers are acting unlawfully. But the penalty of a fine can be inflicted only on the members of the committee of management and the officers, and our group has no committee and no officers. Again, supposing one or more of our employers are companies and not individuals, is any one of the companies " a body of persons " in the meaning of this section or do two or more of them constitute such a body, and can the penalty be imposed on the company directors and secretaries? A similar situation could arise with an occasional grouping of workers.

The Act of 1941 imposes on an authorised trade union holding a negotiation licence certain obligations which are set out in section 12 for registered unions and in section 13 for unregistered unions. They relate to the maintenance of a register of members and ex-members and to the inclusion in the union rules of provisions specifying the conditions of entry into and cesser of membership; in the case of an unregistered union, there is an additional obligation to maintain an office within the State and to appoint a person ordinarily resident in the State to accept service of documents. The register of members must be open to inspection by any person having an interest in the funds of the union, by any officer of the Minister authorised by him, and by any person who satisfies the Minister that he has a *bona fide* interest in inspecting the register and is given an authorisation by the Minster. These are not onerous obligations, but they entail an intervention by the State in the domestic affairs of unions which is new to trade union law.

Sole Right of Organisation

The restrictions on the power of a trade union to negotiate which are imposed by the Act of 1941 were not arbitary innovations. They were effected in pursuance of a policy an important part of which was given expression in Part III of the Act, but this Part has been declared by the Supreme Court to be repugnant to the Constitution. The essential provision of Part III was that an authorised trade union holding a negotiation licence which claimed to have organised a majority of employees (or of employers) of a particular class might apply to a special tribunal for a determination that that union should alone have the right to organise employees (or employers) of that class. The tribunal might then determine that that union, or two or more unions it specified, should for a period of five years have the sole right of such organisation. But such a determination could not be made in favour of a trade union registered in another country and having its headquarters control in that other country.[1]

The constitutional validity of Part III was upheld by the High Court in July 1945 in a judgment by its late President, Mr. Gavan Duffy. But on appeal the Supreme Court took a different view. It held that "a law which takes away the right of the citizens at their choice to form associations and unions not contrary to public order or morality is not a law which can validly be made under the Constitution and Part III of the Trade Union Act, 1941, is in its main principles repugnant to the Constitution". It is important, in studying these judgments, to bear in mind that while Part II of the Act, which is in force, deals with the power of trade unions to *negotiate*, Part III of the Act, which is no longer in force, dealt with the power of trade unions to *organise*.

[1] Civil service staff associations were debarred from applying for a determination. It may be noted that the prohibition of a determination in favour of an "amalgamated" union applied only in respect of a trade union *registered* in another country, so that an "amalgamated" union which was not registered in the United Kingdom but held a negotiation licence here could benefit by a determination. It seems probable that this was not intended, and that the use in ss. 25 and 26 of the words "registered under the law of another country" was an accidental change from the words used in s. 7, "a trade union under the law of another country."

Amalgamation of Unions

One of the purposes of the Act of 1941, though the intention is not expressed in the text and was in any case to some extent defeated by the invalidation of Part III, was to improve the organisation of the trade union movement by reducing the number of trade unions. The Act did not, however, make any additional provision to facilitate the amalgamation of unions. Our law on this subject is still that laid down by the Trade Union Act of 1876 as amended by the Trade Union (Amalgamation) Act, 1917. Any two or more trade unions, whether registered or unregistered, may amalgamate into a single union if each of them takes a ballot vote on the question and if at least 50 per cent. of the members entitled to vote record their votes and the votes in favour exceed those against by at least 20 per cent. These do not seem, on the face of them, very onerous requirements, but they have been found in practice to cause difficulties, and in Great Britain and in Northern Ireland the Societies (Miscellaneous Provisions) Acts, 1940, supplemented the earlier Acts and also provided an alternative and simpler procedure of transfer of engagements.

Methods of Negotiation

Agreement between employers and workers may, subject to the restrictions imposed by Part II of the Act of 1941, be reached by a process of friendly discussion and negotiation, directly between the representatives of the parties, or on a statutory body such as a Joint Labour Committee or a body such as a Joint Industrial Council, whether statutorily recognised or without any sort of official recognition, or with the help of an official conciliation officer or of some unofficial conciliator. Joint Labour Committees, registered Joint Industrial Councils, and official conciliation officers are all dealt with in the Industrial Relations Act, 1946, and need not be furthered considered here. But we have to consider the law applicable if agreement is not reached amicably and the dispute gives rise to a strike or lock-out.

The Right to Strike

One often hears the phrase " the right to strike "—or, less often, " the right to lock out "—as if it expressed some positive and well-defined legal concept. Yet the words " strike " and " lock-out " are apparently not to be found in any British statute concerning trade unions earlier than the Trade Disputes and Trade Unions Act, 1927, which never applied here (though there is an equivalent Act still in force in Northern Ireland). Both words do occur in the Industrial Relations Act, 1946—" strike " and " lock-out " in s. 27 (3) (e), " strike " only in s. 32 (2) and (3), both words again in s. 59, and " strike " in s. 78 which is no longer in force—but in all cases in a restrictive context and without any definition. The position in law seems to be that there is an absence of compulsion to work or to employ, but no positive recognition or regulation of a right to strike or to lock-out.

This is not a mere quibble about words. It raises a practical question and a doubt whether our law corresponds sufficiently closely with the realities of social conditions and needs. If a bus driver decides that the conditions of his employment are not satisfactory to him, he can give notice to his employer and leave his employment; sooner or later he finds other employment and the employer engages another bus driver; but the buses continue all the while to serve the needs of the public. If, on the other hand, a large number of bus drivers decide, in concert, that their conditions of employment are not satisfactory and that therefore they will cease to drive buses, the bus drivers as a body have no intention of seeking other employment, the employer cannot engage other bus drivers—at any rate immediately, and probably not at all—and the needs of the public cease to be served. Unless one is a believer in absolute individualism and *laisser faire*—which would be very unusual in this country and in these days—one must surely find it somewhat disconcerting that the law should treat these two entirely different situations, one created by individual and the other by collective action, as if they were the same.

LEGAL AND ILLEGAL STRIKES

In actual fact, the law does take account, to a very limited extent, of the special nature and effects of a strike. The Conspiracy and Protection of Property Act, 1875 (s. 4, as extended by the Electricity Supply Act, 1927), makes it a criminal offence for a person employed by an employer providing a public gas, water or electricity service to break his contract of service " knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants . . . wholly or to a great extent of their supply of gas or water " or electricity. The employer has also a civil remedy in damages for breach of contract and may sue the employee whether or not criminal proceedings are instituted. The section relates to any breach of contract and not merely to a cessation of work, and therefore covers any wilful breach of duty owed under the contract of service. Section 5 of the same Act, which unlike s. 4 applies to employers and others as well as employees and is not limited to public utility services, makes it a criminal offence if " any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury." But both these sections deal only with acts, whether individual or collective, in breach of contract. Cessation of work on proper termination of the contract is not an offence, however serious the consequences, probable or actual, may be.

The Act of 1875 was, however, by no means entirely restrictive or penal. Section 1, now completed by section 1 of the Trade Disputes Act, 1906, legalised strikes by freeing them from the application of the law of conspiracy. " An agreement or combination to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime " and

" an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act if done without any such agreement or combination would be actionable." These two sections legalise strikes, including (by virtue of a definition of " trade dispute " given for the first time in the 1906 Act) sympathetic strikes, and exempt those taking part in or organising strikes from liabilities which they might otherwise incur (e.g. an action for conspiracy to damage an employer's business).

The immunity conferred by the Act of 1875 is not complete; the Act does not " exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament " nor does it " affect the law relating to riot, unlawful assembly, breach of the peace or sedition, or any offence against the State or the Sovereign."

Picketing, Interference, and Tortious Acts

The Act of 1906 places trade unions and their members in an exceptional position in other respects than those just mentioned. Sections 2, 3 and 4 of that Act read (in a slightly abridged form) as follows:

2. (1) It shall be lawful for one or more persons, acting . . . in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

4. (1) An action against a trade union . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by the Court.

These sections " reaffirm the legality of peaceful picketing . . . remove tortious liability for inducing others to break

their contracts of employment" and "re-establish the general immunity of the funds of a trade union from liability for the tortious acts of its members, servants or agents."[1]

It is important, however, to realise that the matter is by no means so simple as these quotations and summaries may make it appear. Virtually every word of the Acts of 1875 and 1906 requires to be carefully considered in the light not only of the common law and earlier statutes but also of a very large number of decided cases. For example, it must not be assumed that picketing is made legal without regard to the way in which it is carried out: "the right to picket is a very intangible one which is closely limited by the equal right of others to go about their lawful affairs free from obstruction, molestation or intimidation."[2] Reference must therefore be made to the text-books for a detailed exposition of the legal position under these Acts carried over from the British statute book.[3]

Limited Application of Trade Disputes Act

The effect of our Trade Union Act of 1941 upon the conduct of strikes and lock-outs has not yet been the subject of judicial interpretation and decision by our Courts. Section 11 of this Act provides that "Sections 2, 3 and 4 of the Trade Disputes Act, 1906, shall apply only in relation to authorised trade unions which for the time being are holders of negotiation licences and the members and officials of such trade unions, and not otherwise." This is the second—and drastic—method of enforcing the restriction on negotiation, the first being the liability to a fine already mentioned. In the case of a strike conducted by an authorised trade union holding a negotiation licence the position is clear enough; the union and its members enjoy the protection or privileges afforded by the Act of 1906. But the wording of s. 11 of the Act of 1941 raises serious doubts about other strikes.

[1] Citrine, *Trade Union Law*, p. 416. [2] ibid, p. 429.
[3] Several important cases decided by Irish Courts since 1922 are cited by Citrine.

An organisation, or " house association " as it is often called, all the members of which are employed by the same employer and which carries on negotiations on behalf of its own members exclusively is an excepted body. It is not an authorised trade union and it cannot apply for or hold a negotiation licence. It seems to follow from the wording of s. 11 of the Act of 1941 that such an organisation is deprived of the advantages conferred by ss. 2, 3 and 4 of the Act of 1906. This does not mean that the organisation could not call a strike of its members or engage in picketing, but it does mean that it would have to be very careful not to do anything that would be unlawful but for the Act of 1906.

A similar situation would apparently arise in the case of an " unofficial " strike. If persons who are members of an authorised trade union holding a negotiation licence take action independently of, and without the authority of, their union, it might be held that they were not entitled to the benefit of ss. 2, 3 and 4 of the Act of 1906, and they would therefore have to be careful about striking, picketing and so on if they wished to remain " on the right side of the law". They would also, it seems, be in difficulties about securing a termination of the strike so long as it remained unofficial, since if they entered into negotiation with their employer they might be held to be acting unlawfully.

These possible difficulties would arise, however, only in somewhat unusual situations. In ordinary situations, since the only practical difficulty in the way of securing a negotiation licence is a financial one, and even that has been substantially mitigated, the limitation by the Act of 1941 of the application of the Act of 1906 does not in practice impose any real handicap on trade unions in carrying on their activities here in the usual way.

The activities of trade unions in Northern Ireland are restricted in several ways by the Trade Disputes and Trade Unions Act (Northern Ireland), 1927. Under that Act a strike or lock-out is declared illegal " if it has any object other than or in addition to the furtherance of a trade

dispute within the trade or industry in which the strikers (or the employers locking-out) are engaged and is designed or calculated to coerce the Government either directly or by inflicting hardship upon the community," and the provisions of the Trade Disputes Act, 1906, do not apply to an illegal strike or lock-out. Picketing is restricted. Political activities are regulated by a modification of the requirements of the Trade Union Act, 1913, notably by the substitution of " contracting in " for " contracting out." Established civil servants are debarred from membership of an organisation not confined to civil servants. Special provisions are made concerning employees of local and other public authorities. In short, the Act creates a situation which is very different in many respects from that which prevails either in Great Britain or here.

The Control of Government and of Business

A Study in Contrasts

It is not necessary to be a student of Public Administration to realise that the outstanding feature of this age is the ever-increasing range and scope of government control in the social and economic life of the people. The justification in principle for this has been debated so often that I hasten to assure you at this stage that I do not propose to approach the subject either from the moral, the political, or the economic points of view. For the purpose of this study I am not concerned as to whether it should be called control or interference. I accept government control in one degree or another as a fact and my aim is to examine some aspects of the methods and of the underlying administrative principles.

The Growth of Government Control

The industrial revolution by opening the way to the creation of much greater material wealth, vastly increased populations, great industrial activity and international trade on a large scale, was, more than anything else, responsible for these problems to-day. At the beginning of that era governments accepted as if it were gospel the doctrine of *laissez faire* and more or less confined their attentions to defence, law and order, and justice. Later the evils of early industrialisation were made manifest and the principle was accepted that the government should interfere in extreme cases to prevent the exploitation of human beings. At the same time the growth of urban populations under congested conditions and the study of the science of preventive medicine led to the Public Health Laws and Bye Laws designed to ensure that no man through neglect of the elementary precautions of hygiene would be a danger to his neighbours. With new discoveries opportunities were afforded of improving the amenities of ordinary

life by the provision of pipe water supplies, pipe sewerage, and the use of gas and electricity, and of improving transport by the inauguration of railways. These activities, however, could not be undertaken without acquiring the power to purchase private property compulsorily and here again the principle was accepted that the convenience of the individual must be sacrificed for the public good. At first these activities were undertaken by private enterprise with the approval and support of the Public Authorities but eventually the Public Authorities began themselves to undertake some of them. The British government through the establishment of the Post Office and the penny post had already recognised that some activities of a monopoly nature should be operated by the Government. Other governments from time to time applied this principle to railways, tramways, and shipping.

With the growth of international trade, countries began more and more to protect their own industries by the imposition of protective tariffs and by the application of systems of bounties and subsidies. Finally an important factor in the growth of government control was the new political outlook leading to the extension of the franchise and the growth of democracy as we know it to-day and with it the vast schemes of Social Service which in recent years have been implemented in most countries.

During the last war particularly and in the few years preceding it, the concept of a nation being organised by its government economically as well as militarily no doubt encouraged the belief in many that nations could be organised for peace on the same footing.

The war too had upset foreign Exchanges and systems of barter had to be adopted, or large scale currency agreements effected between governments. This again necessitated the distribution of the limited amount of hard currency available and further interference with the ordinary channels of trade.

To-day, though the world is at peace, we live in an atmosphere of rumours of wars and some of the controls of war-time are justified by the anticipation of conflict.

There, briefly, is something of the history of the growth of government control in recent years. As it exists to-day it may be classified roughly under four headings :—

(1) Negative control, which operates by restricting certain operations or prescribing the conditions under which they may be performed, e.g. Factory Acts, Public Health Bye Laws, Town Planning, etc.

(2) Assisting industry by the provision of protective tariffs or granting bounties, subsidies, etc.

(3) Adopting in times of scarcity systems of rationing of services, commodities or currency.

(4) Undertaking industrial or commercial enterprise directly or through government agencies.

It was hardly to be expected that the business world would view this increase in government control as an unmixed blessing. It is perhaps not unnatural that the business man who has built his business by his own efforts feels frustrated by these controls and considers himself cribbed, cabbined and confined by the multitude of regulations or red tape, which he now-a-days encounters in the management of his business. It is perhaps not unnatural also that he puts the blame to a very large extent on the responsible Minister or civil servant. That may be natural, but it is not in fact very often just. The fault where it can be so considered is usually that of the system and not of any individual. This will become clearer when one compares the work of the business man with that of the Civil Servant.

The Aim and Outlook of the Business Man

However complicated, onerous and difficult his task may be the objects of the good business man are simple. These are to make a profit lawfully and to build up a solid business which will guarantee as far as possible the profits of future years and be a capital asset. Anything which contributes towards these ends is good, anything which militates against them is bad for business, i.e. the criterion is simple. The

business man either owns his own business, in which case the result is generally in direct ratio to the energy he puts into it or his position is sufficiently close to the Board of Directors to make sure that exceptional merit is quickly rewarded. Business is normally competitive, conditions change rapidly, decisions have to be taken quickly and consequently the taking of risks within reasonable limits on individual responsibility is a normal feature of business. No Board of Directors will expect that the business man's judgment will be always right; what is expected of him is that his judgment will be right sufficiently often to enable the firm to make the profit which it should expect. The remaining errors of judgment, providing that they are not clearly due to culpable negligence, are accepted as normal in business. Apart from Government and Local Authority regulations, imposed from outside, the business man is a very free agent. If he is the owner he has the last word—otherwise his Board has it—and they are generally free from criticism so long as they are in a position to declare a reasonable dividend for their shareholders. Decisions can, therefore, be made quickly. In addition a business man is either answerable to himself as owner, or to a relatively expert Board of Directors, who can judge the merits of his activities in relation to the comparatively simple criterion of profit. There is, therefore, a common understanding enabling him to act with all the more confidence and expedition.

The criterion of profit, providing a ready measure of efficiency, keeps the business man on the alert and competition compels him to keep abreast of new methods and inventions.

The Task and Outlook of the Civil Servant

The business man, therefore, has normally every inducement to go about his work energetically, to be progressive, to take quick decisions and reasonable risks with the view to producing results which can be measured in terms of a balance sheet. This is in marked contrast to the position and outlook of the civil servant whose work is of a very

different character and whose success or failure cannot be measured in the comparatively simple terms of profit. Under the democratic system of government the people elect Dáil Éireann, Dáil Éireann elects the Taoiseach, and the Taoiseach nominates his Government and the Government proceeds to implement its policy.

The Government, Cabinet or Executive consists of the various Ministers who are at the head of the respective government departments. They are assisted by the permanent Civil Service, each department having a permanent Secretary as its chief official. In practice, this Civil Service of permanent officials, through the development of legislation over a long period, becomes the means by which certain aspects of public policy, which are common to any Government, are assured of continuity, but there is a wide field of policy which is determined by the Minister according to his outlook or that of his party. The civil servant who is required to make a recommendation to his Minister, cannot assess it merely in terms of money, or merely in terms of whether it is just or reasonable. He must consider whether it accords with the Minister's policy, whether it will establish precedents which will involve other obligations, whether the procedure proposed is in accordance with the general Civil Service procedure, whether the loss or saving would be outweighed by national advantage or disadvantage, whether the Department of Finance can be persuaded to make available the necessary funds or staff, whether the proposal conflicts with the policy of other departments, or prejudices their interests, whether it conflicts with broad government policy, what opposition is likely to be evoked amongst various sections of the community and whether it can get the Minister or the Government into trouble by providing ammunition for the Opposition or for an individual politician anxious to ingratiate himself with any section of the community adversely affected.

Frequently so many interests are involved that no one person can reach a decision on a particular matter and considerable time must be spent in consultations and referring the matter here and there for observations.

Red Tape

Control by Regulation and by formal procedure, commonly known as red tape, becomes inevitable in any large undertaking even in the commercial field. This necessity prevails to a far greater extent in a large organisation such as the Civil Service where the peculiar complexities of Government are added to the problem of large-scale organisation. Procedure, organisation, finance, etc., must be reduced to a common denominator which is necessarily less efficient and effective than the personal contact and the personal touch of the business man operating a medium-sized business.

The Force of Criticism

It is a tradition in business, that the house divided against itself must fall and business men are trained to achieve the maximum amount of agreement amongst themselves by compromise. A democratic country, on the other hand, is, in one sense, governed by disagreement, i.e. the power of the Government is checked and balanced by the watchfulness and criticism of the Opposition. The civil servant, therefore, must expect and anticipate criticism, and this anticipation of criticism is an extremely important factor in shaping his administration. Normally criticism is responsible and constructive, though in this matter much depends on the personal factor of the public representatives concerned. Politicians in this country are, in my experience, far more patriotic, conscientious and hard-working than they are generally credited with being. Many of them irrespective of party, and frequently without the reward of public recognition, go to considerable pains to make sincere and valuable contributions to the framing of legislation. It is, however, one of the inevitable defects of the democratic system that there may be in any Parliament some politicians who are insincere and not very responsible in their criticisms. These appeal to the emotions of the unthinking sections of the community. As this type of criticism can at times be very awkward for a Minister and may not always be ignored, the civil servant must anticipate and prepare for it.

Continuity of Policy

There is one other important distinction between the Civil Service and business and that is in continuity of policy. As I have already pointed out the business man who can satisfy himself, if he is the owner, or otherwise his Board of directors, that his management assures reasonable profits, can with confidence pursue a particular line of policy with the knowledge that in ordinary circumstances it will not be upset by a change in the Board of Directors. A civil servant, on the other hand, while he is expected to implement the government's policy energetically, must all the time bear in mind that it is not *his* policy but the policy of the government and must hold himself ready at any time to tackle with equal energy a reversal of the policy if a new government so decides. In these circumstances it is perhaps not so easy for him to identify himself with the policy with the same degree of fervour which would characterise the attitude of a general manager or managing director who had been instrumental in building up a large business over a long period by the application of a consistent policy, altered only to meet a change in circumstances.

These differences in objects and in functions inevitably produce differences in outlook and a different approach to particular problems and the ordinary civil servant would probably find himself as much at sea in an executive commercial position as the average business man would if called upon to direct a branch of the Civil Service and to produce results in accordance with and in spite of the maze of precedents and regulations to which he must have regard. Probably the civil servant would take some little time to adjust himself to his new freedom, to the greater individual responsibility and to the speed of decision, while a business man would undoubtedly feel very frustrated in the Civil Service. In fact, of course, quite a few civil servants have entered the field of business in this country and some have been outstandingly successful. They would probably, however, be the first to state that they did not achieve that success by Civil Service methods any more than success

could be achieved in the ordinary processes of government by purely business methods.

State Control in Practice

As governments have intruded, however, more and more on the field of business, it has become increasingly obvious that the ordinary methods of government must undergo some modification in application. This modification up to recently was largely confined to organisations in which the State engaged directly in commercial or industrial activities. Various methods of control have been availed of for State commercial or industrial undertakings in this country. As you are no doubt aware these include undertakings for production, distribution and sale of electricity, which is in effect a State monopoly, the manufacture of beet sugar, of industrial alcohol, the exploitation of mineral resources, insurance, shipping, air transport, creameries, and the provision of agricultural and industrial credit. In addition many public undertakings of a semi-commercial character are managed by Local Authorities and by Harbour Authorities.

In all instances the ultimate democratic control is complete as the Boards are removable at the discretion of the responsible Minister, who is himself removable by the people. The extent, however, to which the Minister intervenes in the management of the concern varies.

The Irish Sugar Company is an interesting example of a part State and part private enterprise. Its Share Capital consists of ordinary shares, cumulative preference and current debenture Stock. Actually 500,000 out of 500,014 ordinary shares are held by the Minister for Finance. Four of the Directors are appointed by the Government and the remaining three by the members of the Company, all are part time.

The Electricity Supply Board consists of a whole-time Chairman and a number of whole-time Directors and two part-time Directors. The whole-time Directors have some degree of departmental responsibility and are in effect executives of the Company. Like the Sugar Company, the

Electricity Supply Board is largely autonomous in its day-to-day management but in matters of capital expenditure the Department of Finance through the Department of Industry and Commerce retains a measure of control. Boards consisting mainly of business men acting in a part-time capacity manage the Insurance, Shipping and Air Line Companies. Here again there is a very large measure of independence in the ordinary management of the business. The form of control of Harbour Authorities on the other hand is rather different since only a few members are appointed by the Minister, the majority being elected. Take, for example, the Dublin Port and Docks Board, Five Members are appointed by the Dublin Corporation, four by the Dublin Chamber of Commerce, two by the Livestock Trade, two by the Federation of Manufacturers, two by Labour interests and four by the Shipping interests. The remaining four are nominated by the Minister of Industry and Commerce. The Minister, however, under the Harbours Act, 1946, is given, in addition to general supervision, power to make regulations in relation to certain appointments and a veto on borrowing and on Bye Laws and Port charges. Apart from this the Board operates with a very considerable measure of autonomy in the ordinary management of the Port. It is in fact an interesting case of an organisation which is controlled mainly by business men, administered by a special body of officials and supervised by a Department of State. While it must be admitted that the constitution of the Board is such as to ensure a Board of unusually high quality the success and the harmony which it has achieved in its constitutent elements suggests possibilities in the extension of the principle.

In recent years there have been some further interesting examples of State enterprise notably the State acquisition of the Railway undertakings and the formation of Córas Iompair Éireann. The Chairman of that Board is a former professional Civil Servant and the other Members are drawn from Railway Management, Livestock Export and Trade Union sources. The same general make-up is evident in the new Great Northern Railway Board.

Interesting developments in other fields have been the creation of the Industrial Development Authority to advise the Government on such matters as tariffs and the establishment of new industries, and the formation of Córas Tractála Teo to promote the development of foreign trade and Bord Guartaíochta to promote the Tourist industry.

State enterprise poses a serious problem for the political theorist in the measure of Government control and the point or points at which it should be applied, i.e. the problem of achieving a nice balance between efficiency and control. In general it may be said that the more insistence on control of daily operations, the greater the loss of efficiency and initiative. In most cases, however, the control is applied by the appointment and the removal of the Directors, though a measure of control may also be retained over certain major operations such as capital expenditure and borrowing.

It is clearly essential that there should be some measure of democratic control as if Directors were appointed permanently and given a completely free hand, these concerns might in the long run adopt policies in conflict with the National aims or might serve private rather than public interests. On the other hand if Party favour rather than personal merit became the criterion of selection there would be little chance of efficiency or of the growth of a sound long-term policy.

Another interesting question is—what type of person should be appointed as a Director? It would probably be impossible to lay down any general rule. A successful busines man, or a leader of a large Union, a former high Executive, or Technician, an experienced Administrator, all these should have had experience of great value to a Director, but this would not furnish any guarantee of success in the absence of the necessary personal qualities. One of the essential qualifications in a successful Director is an appreciation of his functions and of the point at which the work of the Executive ends and that of the Director begins. There is, of course, also the possibility of developing by education, careful selection and training a type of

professional Director to serve in conjunction with the non-professional Director, thus aiming at a small professional nucleus.

The extent to which the accounts and activities of these Government enterprises should be reviewed by the Oireachtas is another serious problem. On the one hand it would appear that there should be the fullest investigation of the affairs of any concern which is spending public money, but the anticipation of an investigation of this character frequently encourages playing absolutely safe, hinders initiative and leads to a concentration on minor defects rather than on major achievements, tending to take away the short cut or quick decisions essential to the conduct of a business enterprise. Some compromise is, therefore, indicated between commercial and public auditing, leading up to a consideration by the Oireachtas of policy and performance in general rather than of functioning in detail.

As indicated at the begining of this paper, I have not concerned myself with the question as to whether Government interference is justifiable or not. I have accepted it as a fact that in this era, socialism in one form or another exists in one degree or another in nearly all States and I have contrasted business and Civil Service control and have examined various methods of Government control of business undertakings and the underlying principles. One conclusion however, I think does emerge and that is that if this tendency is to continue or develop and Governments are to intrude more and more in the commercial and economic life of the people, it is desirable that new methods of control should be devised and that Governments, while retaining the democratic control of broad policy in the final instance should ensure that the ordinary operations may be conducted with the freedom and the despatch of the commercial undertaking. Or to put it another way, if Governments are to intrude more and more into business, it seems reasonable that business men and business organisation should take an increasing part in Government in the sphere in which they can do most to help, that of administration management and working policy as distinct from high policy.

Structure of the Irish Air Companies

By JAMES GORMAN
SECRETARY, AER RIANTA AND AER LINGUS

(Delivered October, 1952)

1. All over the world to-day governments engage directly or indirectly in business activities to an extent that twenty-five or fifty years ago would not have been dreamt of. In this country economic circumstances and historical developments have led government authorities into taking a fairly active part in many different branches of commercial life. Civil Aviation is one such branch, and the Irish Air Companies are an interesting example of the successful marriage between, on the one side, the government policy of developing the country's commercial aviation potential and, on the other side, an energetic and progressive group of businessmen carrying out that policy on sound commercial lines. While this paper does not trace the secret of this success it sets out, for the benefit of the student of public administration, the make-up of the companies, the relationships which exist between the Air Companies and the State, their relationships with one another and with the British European Airways Corporation which is a shareholder in Aer Lingus, and the general financial structure of the Companies including the arrangements for meeting deficits when these occur. To complete the picture the paper will describe briefly the relations between Directors and Management and how the Management is sub-divided.

AER LINGUS

2. Aer Lingus, the most prominent member of the group, is a private limited liability company, that is a company set up, like very many other business concerns,

under the Companies Acts. It was formed in May 1936, at the instance of the Minister for Industry and Commerce in furtherance of his plans for the development of Irish commercial aviation. The Companies Acts comprise the general law regulating the formation and business of commercial concerns. This makes Aer Lingus different from what is known as a Statutory Corporation. A Statutory Corporation is set up by a special Act which lays down the powers, duties and functions of the body, and which regulates in greater or less detail all its activities. The Electricity Supply Board and Bord na Mona are examples. Aer Lingus, on the other hand, was set up like most other commercial concerns in order to give it commercial freedom in dealing with the hurly-burly of business affairs.

3. In addition to the Companies Acts, there are other laws to which Aer Lingus is subject because it is a company financed ultimately by the State. These laws are the Air Navigation and Transport Acts 1936–1950; among other things, they authorise the State to invest money in the Company and to pay it subsidies and impose some special requirements on the Company which will be mentioned later on.

4. Aer Lingus is a subsidiary of Aer Rianta. A subsidiary means a company all or most of the shares in which are held by some other company, this company being described in turn as the parent. When Aer Lingus came into being in May 1936, Aer Rianta had not yet been formed because the legislation which was required before the State could invest money in the parent and, through it, in the subsidiary had not then been passed. Aer Rianta came into being in April 1937; and we thus have the interesting situation that Aer Lingus is older than its parent. Pending the birth of its parent, Aer Lingus had to find a foster-parent. Having no capital, it got advances from Blackpool and West Coast Air Services, Ltd., a company controlled by Olley Air Services Ltd. When operations began in June 1936, the position in fact was that Aer Lingus was trading in partnership with Olley under the business name of "Irish Sea Airways," the business being managed

by a joint operating committee of Aer Lingus and West Coast Air Services.

5. We must remember, therefore, that Aer Lingus might not have been able to start but for two things; one was the very substantial sum of money advanced by friends across the Irish Sea; and the other, equally important, was the pioneering experience which they made available to the infant Company through the joint Committee. The partnership arrangement continued for some time until it was replaced by a pool arrangement with West Coast.

6. The Company gradually grew from its small beginnings and kept on developing despite the limitations imposed by war conditions. After the end of hostilities the Company and the Government began to take steps towards the wider expansion of Aer Lingus operations. The results of this expansion can be seen in the Company as it exists to-day, but the background which made this expansion possible is not so well known and is of some interest.

7. In April 1946, the Irish and British Governments signed a Bilateral Air Agreement giving the chosen airlines of the respective countries rights to operate into and through each country. For Aer Lingus the outstanding point of this Agreement was that Aer Lingus became the only company to operate scheduled air services between Ireland and Great Britain. The Agreement was based on the recognition that efficiency and economy justified confining operating rights between the two countries to a single company, and that there should be close co-operation in the European zone. These principles were further embodied and clarified in Inter-Company Agreements signed in May 1946, and March 1947, between Aer Rianta and Aer Lingus on the one hand, and British Overseas Airways Corporation (BOAC) and British European Airways Corporation (BEA) on the other hand. The Agreements provided—

(i) For an increase in the authorised capital of Aer Lingus from its original figure of £100,000 to £5,000,000 of which 60% would be held by Aer Rianta and 40% by BOAC and BEA. The present

issued capital is £952,000. (I should mention here that BOAC have recently sold their holding to BEA who now, therefore, hold 40% of the capital.)

(ii) That a majority of the Directors, including the Chairman, would be nominated by Aer Rianta and the balance by BOAC and BEA.

(iii) That services between Ireland and Britain would be run exclusively by Aer Lingus, the capacity provided to be in close relation to the traffic offering.

(iv) That the shareholders would carry between them the profits and losses on the Irish/British and Irish/European services respectively to be operated by Aer Lingus. Profits and losses on services between Ireland and Britain would be shared equally but on the European service profits would be shared 60–40, while losses would be shared 50–50.

8. It is gratifying for Aer Lingus to find itself chosen as the sole scheduled air carrier between Ireland and Britain. This places Aer Lingus in a specially privileged position (not, I may say, in a monopoly position), but it brings responsibilities. For one thing, it makes Aer Lingus a joint venture with shareholders on both sides of the Channel depending, in the ultimate, on the taxpayer of both countries. To show what this means in hard cash to the British taxpayer, he has to date invested £381,000 in capital in the Company and has contributed a total of £450,000 towards its deficits. This should help us to avoid too parochial an outlook. While Aer Lingus is an Irish company in the sense of being formed in Ireland and having its headquarters there, it is really an international company. The bulk of the Company's traffic originates in Britain (admittedly much of it composed of Irish people) and without that traffic potential and without the rights and financial assistance made available by the British Government and the British shareholders, Aer Lingus could not have developed to its present position.

Aerlinte Eireann

9. Aerlinte Eireann which is the sister company of Aer Lingus, is a wholly owned subsidiary of Aer Rianta. It was incorporated in February 1947, as a private limited

liability company to operate trans-atlantic services. Its authorised capital is £5,000,000. Issued capital, i.e. the amount actually invested in the Company by Aer Rianta is £1,425,000. Following the decision in April 1948, not to proceed with this service, the Company's staff were disbanded, its property sold and all its liabilities met. As a result the Company was able, out of the sale of its assets, to repay the whole of the share capital of £1,425,000 and all subsidy (£401,144), leaving a clear surplus of over £55,000. This sum, together with the share capital, is on loan to the Minister for Finance.

AER RIANTA

10. Aer Rianta is the Irish National Aviation Company, with, as its chief purposes, the encouragement of aviation and aeronautics generally, the management of airports, the operation of air services, and the holding of shares in Aer Lingus and other Air Transport Companies. The Company is a public limited liability company, set up, like Aer Lingus, under the Companies Acts. Like Aer Lingus, it is also subject to the Air Navigation and Transport Acts. These Acts authorised the Minister for Finance to promote the formation of the Company, to take shares in it, and to pay it subsidies. All the shares of the Company, apart from directors' qualifying shares and subscribers' shares, are held by the Minister for Finance and all the Directors are appointed by him. Apart from managing Dublin Airport, the Company acts, at present, mainly as a holding and managing Company, with two subsidiaries (Aer Lingus and Aerlinte Eireann). The Company owns 60% of the Aer Lingus share capital, and all the Aerlinte Eireann share capital.

11. The activities of Aer Rianta may be divided into two sections—(*a*) General Administration, and (*b*) Management of Dublin Airport.

MANAGEMENT OF DUBLIN AIRPORT

Under this heading is included not only the maintenance and management of buildings, grounds and runways,

but also the collection of rents, and landing fees and the operation of a restaurant, bar and shop. These activities are at present conducted at a profit (which for 1951/52 was just under £20,000).

GENERAL ADMINISTRATION

12. Under the heading of General Administration are included the Company's activities as a holding company and in the general development of aviation by such methods as the Air Age Educational Service. The Company is, also, one of the bodies which advise the Minister for Industry and Commerce on matters affecting Civil Aviation policy in the country. Of their nature, operations under the heading of General Administration are not likely to be profitable for some time to come.

13. Through the Air Age Education Service the Company aims to foster an interest in and a knowledge of Civil Aviation. In its present phase the service is concentrating on a long term programme of air education for the young on the ground that, if the children of to-day learn to think of air transport as normal and safe, they will tend more and more to use it when they reach maturity and the potential market will, therefore, be very much widened. With the co-operation of the Department of Education and publishers of school texts, suitable aviation material has been included in text books particularly in readers, geographies, and arithmetics. A special wall map showing Aer Lingus routes has been produced and distributed to schools throughout the country and two special booklets *Ireland Takes Wing* and *Air Freight* have been produced and circulated to schools including Technical Schools. Schools, Youth Groups and Clubs are encouraged to visit Shannon and Dublin Airports where they are shown over the buildings, hangars, workshops and aircraft. In co-operation with C.I.E. parties of school children are enabled to visit Dublin Airport in the course of tours in the city of Dublin.

14. In Ireland there is very little private flying. There is, however, a small but keen following for aero modelling

and the Company has helped the Model Aeronautics Council of Ireland in various ways in the belief that voluntary undertakings which foster an interest in any aspect of flying are worthy of interest and support. The Company has presented a perpetual trophy for competition among the members of the Model Aeronautics Council and provides a well equipped stand at the Council's annual exhibitions.

15. Aer Rianta supports and encourages Aer Lingus in the development of its business. Wherever there appears to be a reasonable prospect of successful development of any aspect of that Company's business the Board of Aer Rianta have signified their readiness to support the project.

FINANCES OF THE COMPANIES

16. Here is a brief description of the finances of the Companies. The sole shareholder in Aer Rianta is the Minister for Finance. He has invested just £2,000,000 in Aer Rianta. Aer Rianta in turn has invested £571,000 in Aer Lingus, being its 60% of that Company's capital (£952,000) and £1,425,000 in Aerlinte Eireann. These figures show that while the Companies are small compared with other air companies, they are in the big business class as companies go in Ireland.

17. The day to day running expenses of the Air Companies are intended to be met from revenue. In the case of Aer Rianta there is at present an over-all profit on all activities combined (i.e. Airport Management and General Administration) which in 1951/52 was £18,000. For technical reasons arising from the methods of Government financing, Aer Rianta cannot set off the loss on General Administration against the profit on Airport Management but must hand over the whole of the Airport Management profit while looking for subsidy to meet the loss on General Administration.

18. In the case of Aer Lingus, losses when they occur are met by the shareholders under the formula set up by the Inter-Company Agreements. Aer Rianta's share of the Aer Lingus loss comes as a subsidy from the State via the Minister for Industry and Commerce. For the last two

years, however, Aer Lingus has been operating at a profit. The profit is very creditable when we remember that it has been achieved despite payment of very high rents and landing charges at Dublin Airport while the Company's fares and the rate received for the carriage of air-mail are among the lowest in the world. The Company's capacity to earn profits in the future is being very seriously threatened by the upward pressure of costs of all kinds.

Relationship with Government Departments

19. The Air Companies being set up at the instance of Government Ministers, with their activities regulated by statute and with deficits when they occur being met out of subsidy, must of necessity keep in close touch with Ministers and their Departments—mainly Industry and Commerce and Finance. The Companies' annual accounts must be submitted to the Department of Finance in a form determined by that Department and they are placed on the table of the Oireachtas. The Companies must furnish information on their business as required to both Ministers. The Companies' Auditor is the Comptroller and Auditor General. The Companies themselves asked for this because, as public money is involved they consider it most suitable that the Parliamentary Auditor should audit their accounts.

20. The Minister for Industry and Commerce maintains a measure of control over rates and tariffs and over the routes and frequencies operated by Aer Lingus. This control arises under the Bilateral Agreements between Ireland and Great Britain and other countries. The Minister for Industry and Commerce is of course the statutory authority on air safety, air traffic control and licensing of personnel, as well as maintaining a full scale Meteorological Service and owning the two Airports in Ireland to which Aer Lingus operates and one of which Aer Rianta manages.

The Boards

21. The Boards manage the Companies' business in the broadest and most general sense of the term. The Chairman

and Directors of our Air Companies are all part-time and the Boards partly interlock with one another. The Chairman and Directors of Aer Rianta are appointed by the Minister for Finance in consultation with the Minister for Industry and Commerce. Since the time of the Inter-Company Agreements the Directors of Aer Lingus are appointed by the shareholders, i.e., Aer Rianta and British European Airways (BEA).

22. Taking Aer Lingus as an example, the general functions of the Board might be summarised as follows :—

(*a*) To appoint the chief executives of the Company.

(*b*) To settle the general policy on which the Company shall be operated.

(*c*) To approve major expenditure, particularly on capital projects.

(*d*) To approve and adopt the Company's estimates of revenue and expenditure.

(*e*) To approve and adopt the Company's annual accounts and balance sheet which they then forward with a report to the Shareholders.

(*f*) In general terms, to decide all matters of high policy and to deal with matters of major importance that may arise.

There are five directors (three nominees of Aer Rianta and two of BEA).

MANAGEMENT

23. The function of Management, as it name implies, is to manage i.e. to conduct the affairs of the Company along the lines of policy laid down by the Board. The General Manager, as the Board's appointed chief executive, is responsible for the efficient organisation and working of the Company. The Board expect him to keep them informed of the progress of the Company's business, and of all major matters affecting it, and to initiate proposals for changes in Company policy and for new policy to meet new conditions as they arise. To sum up, the relationship between the Board and Management is that Board give directions on broad lines of policy, and the General Manager ensures, directly or through his executives, that the Company is efficiently organised and run in accordance with that general policy.

24. The sub-divisions of the Management of Aer Lingus may be described briefly as follows :—

(*a*) *The Technical Division comprising*—

(1) *The Operations Department* concerned with flight operations including ground facilities and the despatch of the Company's aircraft.

(2) *The Engineering Department* concerned with maintenance and overhaul, inspection and related functions including research and a limited degree of manufacturing, and

(3) *The Communications Department* concerned with the all-important matter of proper communications. These comprise the provision and maintenance of airborne radio, the organisation of air to ground communication and the organisation of point to point (ground) communication by telephone, teleprinter and radio.

(*b*) *The Commercial Division* comprising—

(1) *The Traffic Department* which deals with all aspects of passenger and cargo handling at airports and city offices.

(2) *The Sales Department* which ensures that the seats and cargo space provided on the Company's services are sold, and

(3) *The Publicity Department* which deals with publicity, advertising in its various forms and public relations.

(*c*) *The Staff & Services Department* which finds the staff required by the various Departments, looks after all matters concerned with their conditions of employment and provides them with the accommodation and equipment they require for their work.

(*d*) *The Supplies Department* responsible for the purchasing of all the Company's requirements of goods and services.

(*e*) *The Accounts Department* concerned with the collection and safeguarding of the Company's revenue, the making of all payments and the preparation of financial budgets and annual accounts, statistics, costings and financial analysis as required.

The Hospitals Commission

A Summary of its Functions and Activities

By EAMONN DE BARRA

ACCOUNTANT AND ASSISTANT-SECRETARY, HOSPITALS COMMISSION.

The Hospitals Commission was set up under the Public Hospitals Act, 1933, which is defined in its preamble as

an Act for the granting of powers to enable funds to be raised by means of Sweepstakes and Drawings of Prizes for the benefit of certain classes of institutions and organisations affording social services relating directly or indirectly to the physical or mental health of the people, and to provide for the disposal and application of the funds so raised, and also to make provision for the general improvement and co-ordination of the facilities made available to the public by such institutions and organisations as aforesaid, and to provide for divers matters connected with the matters aforesaid and to make such amendments of the law as may be necessary.

Notwithstanding the fact that the Public Hospitals Act, 1933, did make provision for " divers matters," as well as for the disposal of the funds raised by Sweepstakes, and did (as we shall see) empower the Hospitals Commission to extend its sphere of activities to matters other than those connected with Sweepstake Funds, it quite commonly is thought among the general public that the Commission's functions are solely concerned with the distribution of the proceeds of the Sweepstakes. It is surprising, too, how frequently the Hospitals Commission is confused with other bodies connected with the Sweepstakes, such as Hospitals Trust Ltd., the Hospitals Trust Board and the Sweepstake Committee (otherwise known as " The Associated Hospitals Sweepstake Committee.") At the outset, therefore, it is desirable that the separate and distinct functions exercised by each of the bodies mentioned should be understood.

The readiest way, I think, in which I can supply the information necessary for such an understanding is to deal briefly with the arrangements appertaining to the distribution of the proceeds of the Hospitals Sweepstakes from

the time of their inception in the year 1930 to the coming into operation of the Public Hospitals Act, 1933. I do not propose to give a detailed history of the Sweepstake scheme or of its operation during the first few years, but will confine myself to a summary which I hope will contain the information necessary for an appreciation of the situation which existed when the Hospitals Commission was set up.

PUBLIC CHARITABLE HOSPITALS (TEMPORARY PROVISIONS) ACT, 1930.

This Act (No. 12 of 1930) was :

an Act for the granting of powers to enable funds to be raised by means of Sweepstakes and Drawings of Prizes for the support of Public Charitable Hospitals and Sanatoria in Saorstat Eireann.

Under it the first of the Sweepstakes, that on the Manchester November Handicap, 1930, was organised under the promoting authority of six hospitals acting through a representative Committee, appointed in accordance with Section 2 of the Act. That Committee entered into an agreement with Hospitals Trust Limited to promote and organise the Sweepstake.

It is to be noted that Hospitals Trust Limited is not mentioned by name in the 1930 Act (nor in any of the subsequent Acts) and that it is the Committee appointed by the hospitals for the purpose of the Sweepstakes that is the body responsible in law for the promotion of the Sweepstake schemes, subject to the sanction of the Minister for Justice. It is to be understood, accordingly, that the functions exercised by the Sweepstake Committee, otherwise styled the "Associated Hospitals Sweepstake Committee," are defined in the 1930 Act and that the functions of Hospitals Trust Limited are not therein defined. Hospitals Trust Limited is employed by the Associated Hospitals Sweepstake Committee to promote and organise the Sweepstakes and may be deemed to be referred to in Section 5 of the 1930 Act (clause (*b*) sub-section 2) which states :

where a payment is made to a person for promoting such sweepstake such payment shall be deemed for the purposes of this Act to be part of the expenses of holding such sweepstake . . .

FIRST THREE SWEEPSTAKES

The proceeds of the first three Sweepstakes on the Manchester November Handicap, 1930, the Grand National, 1931 and the Derby, 1931, were divided among the participating hospitals on a basis of distribution agreed upon by the promoting Hospitals Committee, with the sanction of the Minister for Justice, in accordance with the terms of the Public Charitable Hospitals (Temporary Provisions) Act, 1930.

Six hospitals shared the available surplus of the first Sweepstake which amounted to £131,797 19*s.* 6*d.*, including interest accrued on deposits.

Twenty-three hospitals shared the total of £439,858 8*s.* 0*d.* produced by the second Sweepstake.

Thirty-four hospitals shared the total of £698,365 19*s.* 6*d.* produced by the third Sweepstake.

PUBLIC CHARITABLE HOSPITALS (AMENDMENT) ACT, 1931

The figures just quoted indicate that the Sweepstake scheme had met with a phenomenal success. Over a million and a quarter pounds had been distributed to the participating hospitals inside a year. The progressive success of future Sweepstakes appeared assured. It was in such an atmosphere that the Public Charitable Hospitals (Amendment) Act, 1931, (No. 24 of 1931), was passed. In addition to extending participation in the benefits of the Sweepstakes to six extra hospitals, the 1931 amending Act made two very important changes concerning the distribution of the available surplus of the Sweepstakes :

firstly by providing for the appointment of a Committee of Reference and

secondly by decreeing that the available surplus should be divided as to two-thirds among the participating hospitals and one-third to be paid to the Minister for Local Government and Public Health " and shall be applied by him in such a manner as he shall think fit in or towards the provision, improvement

or equipment of institutions for the prevention, treatment or cure of physical or mental diseases or injuries of human beings."

The Committee of Reference appointed in accordance with the terms of this Act was required : " . . . . when requested by the Minister so to do and after consultation with the committee managing such sweepstake, (to) report to the Minister as to the proportions in which the said two-thirds of such available surplus should be divided . . . " The expenses of the Committee of Reference were deemed to form part of the expenses of holding the Sweepstakes and the members were to be paid such remuneration as directed by the Minister for Finance.

Reports of the Committee of Reference

The three separate reports of the Committee of Reference concerning the distribution of the two-thirds of the available surpluses of the fourth, fifth and sixth Sweepstakes were published in printed form. The allocation of payments to the participating hospitals was changed from that of the percentage basis used in respect of the first three Sweepstakes. This is what the first report of the Committee of Reference (on the Manchester November Handicap Sweepstake, 1931) states : " Having given mature consideration to the results of our preliminary enquiries, we decided that the only equitable divisions of the available surplus which we could devise should be based on a computation of the *total* financial needs of each of the hospitals, which were arrived at by a consideration of the several claims under the following heads :

(*a*) Repayment of Loans, including Bank Overdraft.
(*b*) Building Works, including Mechanical Plant, Cost of Site and Professional Fees.
(*c*) Furniture.
(*d*) Medical, Surgical and Pathological apparatus.
(*e*) Investment (for Endowment purposes)."

The total claims under those heads submitted by the participating hospitals amounted to £8,206,245 1*s.* 11*d.* The total awards of the Committee of Reference

amounted to £5,256,964 19*s.* 4*d.* Since sums totalling £1,270,022 7*s.* 0*d.* had already been paid out of the proceeds of the first three Sweepstakes, the balance of the total awards amounted to £3,986,942 12*s.* 4*d.* The available surplus of the fourth Sweepstake was £502,167 15*s.* 4*d.* and this was distributed to the individual participating hospitals in proportion to the balances of their awards. The same procedure was adopted by the Committee of Reference in recommending the division of the available surpluses of £469,473 14*s.* 7*d.* and £520,837 8*s.* 7*d.* of the fifth and sixth Sweepstakes respectively.

PUBLIC HOSPITALS ACT, 1933

The Public Hospitals Act, 1933 (No. 18 of 1933) made many important changes in the procedure for dealing with the available surpluses of the Sweepstakes. These may be summarised as follows :

1. The principal Minister concerned with the administering of the Act became the Minister for Local Government and Public Health instead of the Minister for Justice as prescribed in the previous Acts. The latter continued to exercise functions in regard to the actual running of the Sweepstake schemes as heretofore.
2. The available surpluses of the Sweepstakes became payable to the National Hospital Trustees and all monies paid or payable to them were to form a single fund to be known as the Hospitals Trust Fund.
3. The Hospitals Commission was set up in place of the Committee of Reference.
4. The procedure for making applications for grants out of the Hospitals Trust Fund was defined and provision made for attaching conditions by the Minister for Local Government and Public Health to grants paid to hospitals.
5. A more extended definition of the word " hospital " was given in the Act which permitted a far greater number of institutions to apply for a share in the Sweepstake proceeds.

Two-thirds of the surpluses of the seventh and eighth Sweepstakes, which had not been distributed to the participating voluntary hospitals at the time of the passing of the 1933 Act, were (under the terms of that Act) paid into the Hospitals Trust Fund. The one-third shares of the available surpluses of both these Sweepstakes had, however, been paid to the Minister for Local Government and Public Health and were retained by him to meet definite commitments already entered into by him in respect of Local Authority hospital projects.

Functions of the Hospitals Commission

The functions of the Hospitals Commission are detailed in Section 17 of the Public Hospitals Act, 1933, as follows :

It shall be the duty of the Hospitals Commission to do the following things, that is to say :—

(*a*) on their own motion to inquire into, examine and survey generally the hospital and nursing facilities existing in Saorstat Eireann and to collect, record and digest information in relation to such facilities, the needs of the people for such facilities, and the adjustment of such facilities to such needs ;

(*b*) to investigate and to report to the Minister on every matter relating to hospital and nursing facilities in Saorstat Eireann which is referred to them by the Minister for such investigation and report ;

(*c*) at the request of the Minister, to make and submit to the Minister schemes for the improvement and co-ordination of hospital or nursing or both hospital and nursing facilities in the whole or any particular part of Saorstat Eireann ;

(*d*) to investigate and report to the Minister on every matter referred to them by the Minister under and in pursuance of this Act other than this section ;

(*e*) on their own motion or at the request of the Minister to advise the Minister on any matter relating to the administration of the Hospitals Trust Fund.

It can be seen, therefore, that the Public Hospitals Act, 1933, provided for investigations into the country's hospital affairs on a far more extensive scale and in a more detailed form than had been contemplated in the previous Acts. Whereas the Committee of Reference was confined to examining and reporting on the claims of the participating

voluntary hospitals for shares in the distribution of the proceeds of the Sweepstakes, the Hospitals Commission was empowered to conduct an enquiry into the entire hospital needs of the community.

Commission's Published Reports

The Hospitals Commission has published seven General Reports and in these will be found information as to the manner in which it has exercised its functions. In particular, the Commission's first general report (published in February, 1936) will enable the reader to evaluate the work done in surveying the existing hospital facilities of the country and in recommending how those facilities could be co-ordinated and improved. The proposals contained in that First Report regarding future hospital development and co-ordination of hospital facilities :

A. In relation to the country generally as to Regional, County and District Hospitals ;

B. In relation to the chief hospital centres, Dublin, Cork and Galway ;

C. In relation to smaller areas possessing more than one hospital engaged in similar activities ;

D. In relation to National hospitals and institutions such as Sanatoria, Cancer Hospitals and other bodies ;

received at the time of publication the general endorsement of informed public opinion, both medical and lay. A large portion of the schemes then advocated by the Commission has since been completed and a further portion is at present in the course of being achieved.

Several of the schemes outlined in the Commission's first General Report were amplified in its subsequent Reports.

Copies of reports and recommendations made by the Commission to the Minister for Local Government and Public Health and to the Minister for Health in respect of applications for grants from the Hospitals Trust Fund were reproduced in the Commission's printed General Reports.

DIVERSITY OF SUBJECTS REPORTED ON BY THE COMMISSION

As well as the major issues of hospital development generally and the separate recommendations (numbering over 500) in connection with applications for grants from the Hospitals Trust Fund, the Hospitals Commission touched upon a wide range of subjects relating to hospitalisation and cognate matters in its several published reports. The following necessarily abridged list indicates the diversity of the problems investigated and reported on by the Commission :—

Hospital Co-operation and Hospital Administrative Methods
Pay Beds in Voluntary Hospitals
Medical Social Service and Almoners
Hospital Accommodation for Sane Epileptics
Medical Research
Hospital Libraries
Hospital Planning Methods
Accommodation for Tuberculosis
Cancer Hospital Facilities
Public Health Clinics
Mental Deficiency (Special Investigation)
Psychiatric Clinics and Voluntary Mental Treatment
Hospitalisation of the Chronic Sick and Incurables
Hospital Information Bureau
Fire Precautions in Hospitals
Ambulance Services
Hospitals and Emergency Precautions
Rheumatism Clinic
Serum Institute
Outdoor District Nursing Services
Convalescent Home for Nurses
Air Raid Precautions in Hospitals
Appointments System for Out-Patients Clinics
Pension Scheme for Nurses
Nursing Salaries and Conditions of Service.

PUBLIC HOSPITALS (AMENDMENT) ACT, 1940

This Act describes itself as "An Act to provide for the establishment by the Hospitals Commission of Bureaus for obtaining and giving information as to the accommodation available, in certain hospitals, to provide for the investigation of certain complaints relating to such hospitals, to amend the Public Hospitals Act, 1933, and to extend the exercise of certain powers specified therein, to repeal the Public Hospitals (Amendment) Act, 1939, and to provide for other matters connected with the matters aforesaid."

In addition to its provision for the establishment of Bureaus, the 1940 Act is important by reason of its extending to officers duly authorised on behalf of the Minister or of the Hospitals Commission the right to exercise all or any of the powers specified in the Public Hospitals Act, 1933, regarding their inspection of hospitals and qualification " to call for and be furnished with full information in relation to the management and the financial position of any hospital or nursing organisation and to see and examine all accounts of the receipts and expenditure of the governing body of such hospital or nursing organisation and also all or any books and other documents containing any record of such receipts and expenditure."

DUBLIN HOSPITALS BUREAU

The " Dublin Hospitals Bureau Order, 1940 " (Statutory Rules and Orders, 1940, No. 330) was made by the Minister for Local Government and Public Health on 9th November, 1940, consenting to the establishment of a Bureau in relation to thirtyone Dublin hospitals listed in the Order.

The " Hospitals Commission (Dublin Hospitals Bureau) Regulations, 1941 " (Statutory Rules and Orders, 1941, No. 236) dated 28th May 1941 contained the regulations for the working of the " Bed Bureau " which was inaugurated as a part-time service on 3rd June 1941, and operated as a full 24-hours' service as from 1st July 1941. This day and night service of the Bureau has been maintained since that date without interruption.

The Bed Bureau operates as a separate organisation

under the direct supervision of the Hospitals Commission. Detailed records are kept of all applications for admission to hospitals and of the outcome of the Bureau's efforts to secure such admission. The Advisory Committee provided for in the Public Hospitals (Amendment) Act, 1940, composed of one representative of each of the hospitals participating in the scheme, is consulted when necessary and meets at the Commission's offices.

Reports (together with the relevant statistical tables) on the working of the Dublin Hospitals Bureau are submitted annually to the Minister for Health and are reproduced in the Commission's published General Reports.

Hospital Deficits

In a particular way the Hospitals Commission has had more intimate dealings over the years with the voluntary hospitals than with the others. This was inevitably the result of the introduction of the system in 1934 of paying the annual maintenance deficits of the participating voluntary hospitals. This system of necessity entailed a detailed examination of each hospital's annual accounts (which were required to be submitted on a prescribed form) and of the various factors which influenced the trends of income and expenditure. The growing importance of the deficit situation of the voluntary hospitals may be judged by the fact that the total deficits of these hospitals increased from £55,000 (approximately) in 1933 to £629,000 (approximately) in 1951.

In June 1950 the policy of the payment of "Fixed Deficit" grants to the participating voluntary hospitals was introduced following the decision by the Minister for Health to stabilise the total amount payable annually from the Hospitals Trust Fund in respect of the deficits at £400,000. The "Fixed Deficit" allocation in the case of each hospital was based on the average of its deficits for the three years 1947, 1948 and 1949. Under the scheme arrangements were made for the payment of grants representing 45% each of the "Fixed Deficits" for the current year on 31st March and 30th September in order to relieve

the situation caused by rising bank overdrafts. The remaining 10% was to be paid following the examination of the audited accounts of the year in question.

Financial and Other Statistical Tables

The Hospitals Commission compiles statistical summaries based on the returns received from the participating voluntary hospitals and these are issued annually (in stencilled copies) to the hospital authorities for their guidance and information. The tables so issued contain the comparative figures of in-patient bed occupancy and out-patient attendances, income and expenditure analysed under sub-headings and costs per occupied bed similarly analysed.

From time to time, too, the Commission has carried out a survey of the hospital bed accommodation in the country, inclusive of public voluntary, private and local authority hospitals. A table summarising the results of the survey carried out in the year 1949 was published in the First Report of the Department of Health, 1945–49, Appendix 4.

Membership of International Hospital Federation

From the inception of the International Hospital Federation the Hospitals Commission has been an affiliated member and was also a member in former years of the International Hospitals Association which the Federation may be said to have replaced. The Commission has been represented at the various Congresses and Study Tours held by both of the above-named international organisations. From time to time, too, the Commission has compiled replies to various questionnaires relating to hospital and cognate matters issued to membership countries for comparative and research purposes. In turn the information and statistics made available to the Commission through its participation in the international organisations mentioned, as well as through the contacts established in the individual countries, have been at the disposal of hospital authorities and other interested parties here.

SWEEPSTAKE FUNDS

As a matter of general interest it may be noted that the total proceeds of the Sweepstakes (available for hospital purposes) up to 31st December, 1952, amounted to £21,120,000 approximately. Adding dividends etc. on investments (less loss on sale of securities, expenses, etc.) amounting to £3,463,000 brings the total available from all sources up to £24,583,000. The total grants paid to hospitals up to 31st December, 1952 out of Sweepstake Funds amounted to £23,355,000 approximately and the balance in the Hospitals Trust Fund at that date was £1,228,000 approximately.

As already pointed out the various bodies with the somewhat similar names having dealings with the Sweepstake Funds exercise separate and distinct functions which, for clarity purposes, it may be of some benefit to summarise as under :—

(*a*) The Associated Hospitals Sweepstake Committee, representative of the participating voluntary hospitals, constitutes the " sweepstake committee " empowered by the Public Hospitals Act, 1933, to organise approved sweepstake schemes.

(*b*) Hospitals Trust Limited is the body entrusted by the Associated Hospitals Sweepstake Committee with the work of promoting the sweepstakes.

(*c*) The Hospitals Trust Board (which replaced the National Hospital Trustees) manages the Hospitals Trust Fund.

(*d*) The Hospitals Commission, among its various functions, investigates and reports on applications for grants from the Hospitals Trust Fund.

Local Government from the Councillor's Point of View

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This paper attempts to give an account of the part played by the elected councillor in the Irish Local Government System at the present time (1952). The author hopes to be able to show the nature and extent of the day-to-day work of the councillor and to indicate the approach of the councillor to the problems involved. (The importance of such a study in any attempt to understand fully our Local Government System will be readily appreciated for if local representation were removed from the system, it would rapidly become a mere instrument for the deconcentration of central government administration.)

The paper is divided into five parts. The opening section gives a brief description of the existing local government system to serve as a background to the later discussion. Next the position of the elected council in the system is examined both as fixed by statute and as occurs in practice. The third section deals in greater detail with a particular aspect of a council's activity and describes the work of the Housing Committee of the Dublin County Council. The fourth section of the paper is devoted to a discussion of the position of the individual councillor. Finally a section is devoted to the question of Local Government Reform in which the author expresses some personal views on this important subject.

Throughout the paper, the opinions expressed are the personal opinions of the author and are not necessarily representative of the local authorities of which he is a member, or of the political party to which he belongs. The author's experience of local government is confined to two authorities—Dublin County Council and Dun Laoghaire Borough Council—and it is quite likely that

many statements in the paper would require modification before they could be taken as referring to all local authorities in Ireland. In general, however, the broad outlines of the picture given may be taken as typical.

The Local Government System

The present pattern of local government units and their functions is the end product of a multitude of acts from the Poor Relief (Ireland) Act of 1838 to the County Management Act of 1940. It would be impossible to describe in a few hundred words even the outlines of present complex and diffusive system. However it is well to mention some of the essential features of that system.

The various functions of local government in Ireland are divided among Counties, County Boroughs, Boroughs, Urban Districts and Towns (all of which are true units of local government) and in addition a number of statutory committees and joint boards. At present, there are 27 administrative counties, 4 county boroughs, 7 boroughs, 49 urban districts and 28 incorporated towns. According to the Census of 1946, about 64% of the population of the twenty-six counties lived in areas which were administered for all purposes of local government by a County Council; a further 22% lived in areas administered for all purposes by a County Borough Corporation; while the remaining 14% were governed under a two-tier system in which the various local government functions are divided between the county council and local urban authority. Each local authority consists of an elected council, a manager and a staff of administrative and technical officers. The council is elected on an unrestricted adult franchise. From 1953 on the councillors are to hold office for a period of five years. In practice, the council is responsible for the formation of major policy as it alone can provide money to carry out this policy by the making of a rate. The manager is appointed by the Minister for Local Government on the recommendation of the Local Appointments Commission and is the chief executive officer of the local authority. The administrative and technical officers are appointed by

the manager under regulations made by the appropriate Minister who determines the method of appointment, the remuneration, the duties and conditions of service in respect of each officer.

The functions exercised by local authorities at the present day are very numerous indeed and deal with nearly every form of governmental activity. A hundred years ago, the local authorities of that time (Municipal Corporations, Municipal Commissioners, Grand Juries and Boards of Guardians) were mainly concerned with the maintenance of roads and bridges, the relief of the poor, the maintenance of lunatic asylums, county infirmaries and industrial schools, together with the administration of municipal property and certain judicial functions. During the latter half of the nineteenth century, the scope of local government was vastly increased by a series of enactments dealing with Public Health, Sanitary Services and Housing. The first half of the present century has seen an equally large expansion both in the scope of the existing services and in the provision of new services such as vocational education, town and county planning and civil defence. A good idea of the present range and level of local government services can be obtained by studying the explanatory tables accompanying the estimates of a County Council or a County Borough.

It is impossible to appreciate the main problems of local government at the present time without a proper knowledge of local government finance. Twenty-five years ago, the net revenue expenditure of local authorities was about 9·3 million pounds; of this amount 5·3 million pounds was collected in rates, 2·8 million pounds was received in grants and other receipts amounted to 1·2 million pounds. Since then the change in the value of money and the expansion in local government services has meant a considerable increase in expenditure. At present, (1952), local authorities receive about 11 million pounds in rates, a further 11 million pounds in grants and about 4 million pounds in other receipts. During 25 years, therefore, rates have increased by 108% and grants by 400%; in each

case at least 90% of the increase can be attributed to the change in the value of money. The revenue expenditure of a local authority is controlled by annual estimates of expenses which are prepared by the manager for submission to the council. Once the final estimates have been agreed and the necessary rate struck to meet the expense involved, the expenditure of the money voted is a matter for the manager alone ; however, the manager cannot overspend on any statutory heading in the estimates without express approval of the council, even if there are savings on other headings to offset the proposed over expenditure. Local authorities do not draw up a capital budget or a general scheme of capital works. Items of capital expenditure are submitted individually to the council for approval and do not figure in the annual estimates until it is necessary to make provision for the payment of the loan charges. The accounts of each local authority are subject to audit by a local Government Auditor who may surcharge any officer or any councillor responsible for illegal expenditure.

The last remaining important feature of the local government system in this country is the relation between the local authority and the central government. The local authority has relations with the Minister for Local Government, the Minister for Health, the Minister for Social Welfare and to a lesser extent with the Minister for Agriculture, the Minister for Education and the Minister for Justice. In addition to his statutory powers to make regulations implementing Acts affecting local authorities, the appropriate Minister (usually the Minister for Local Government) exercises continual control over the operations of each local authority. The Minister controls most of the revenue expenditure of a local authority as a result of his power to attach conditions to the sanctioning of grants for various purposes ; he controls capital expenditure by attaching conditions to loans made available from the local loans fund ; he controls the scope of a local authority's activity by means of his powers to determine in respect of all posts not specifically covered by statute—its necessity or otherwise, the method of appointment, the duties and the remuneration

involved. In addition the Minister acts in a quasi-judicial capacity when certain matters are in dispute between an individual and a local authority; and finally he can remove any officer, any councillor or all the elected members from office for any period he thinks fit after holding a local inquiry, the report of which need not be published.

The Elected Council

The present section of the paper deals with the position of the elected council in the local government system. It attempts to give an account not only of the statutory powers of the council but also of the actual extent to which the council controls and influences the actions of a local authority.

Each council is composed of members elected on an unrestricted adult franchise by means of proportional representation, the average poll being 40% of the electorate. Most of the county councils contain between twenty and thirty members, the county being divided for election purposes into county electoral areas. Most urban councils consist of nine or twelve members elected from the whole area as a unit.

The powers of the elected representatives are set out in the County Management Act, 1940, and in the special Acts dealing with the County Boroughs. The main functions reserved to a County Council or an Urban Authority are listed in the second schedule of the 1940 Act. The important ones are—the making of a rate, the borrowing of money, the adoption of a permissive enactment, the disposal of any part of the corporate estate, an application for a boundary extension, the regulation of the council's procedure, and, subject to certain conditions, the suspension of the manager. A statutory order made by the Minister for Local Government in 1948 added to the list of reserved functions, the most notable of the new powers being that of contributing to University Education. All other functions are exercised by the County Manager. Under certain circumstances the council can, by resolution, requisition the Manager to perform a specific action; such a

resolution must apply to a specific case and not the general exercise of any function ; furthermore the resolution cannot apply to certain listed functions such as the control of staff or the payment of home assistance. The County Manager is obliged to furnish all the information at his disposal concerning any business of the council, if requested to do so by the council or its chairman. The effect of these provisions is that the elected council is responsible for the provision of money for both revenue and capital expenditure and is enabled to control the general policy of the local authority.

The financial control of the council over the manager is a general control. The actual estimation of the cost of any item of expenditure and the control of the expenditure of the money voted are the concern of the manager. The estimates for each year are presented to the council by the manager a month or two before the start of the financial year. These estimates are discussed in detail—often at successive meetings and usually in committee. The manager tells the council the amount of money he would require to maintain each of the existing services during the coming year and how much extra would be required to provide additional services which have been requested during the year by councillors or by ratepayers. The council then makes its decision balancing cost against benefit in respect of each item. The fact that rates to-day absorb only the same percentage of the national income as they did 25 years ago (i.e. 3.1%) is a tribute to the care with which this balance of cost and benefit has been maintained. As mentioned previously, new capital works are submitted separately to the council by the manager, usually in the form of a report outlining the scope of the proposed new works, the cost involved and the likely benefit to the community. The matter is then debated at some length. In a few cases a decision is deferred in order that further reports may be made available to the council or else the matter is referred to the next estimates meeting so that it may be considered in the light of the general financial position. More usually, however, a definite decision is taken

either to proceed with the scheme or else to postpone it indefinitely. If the scheme is approved, full plans are prepared and sent to the appropriate State department for sanction. The next step is for the manager to invite tenders and submit the tender he proposes to accept for sanction by the department. The council then authorises the raising of a loan from the Local Loans Fund or elsewhere. Once the council has executed the loan documents, it ceases to be directly concerned with the expenditure of the money. In practice, progress of capital works is discussed from time to time, usually as a result of questions to the manager by the councillors. In some local authorities, the practice has grown up recently that the manager submits a monthly or quarterly report on all the capital works in progress or under consideration.

The policy of a local authority on any matter is influenced by the elected council, the manager and one or more of the central departments. The council by means of its broad financial powers, its power to " adopt " legislation and its power to direct the manager to do specific things, is able to control the broad lines of policy. The manager, in the exercise of his executive functions, controls the formation of policy in detail. The Ministers and their Departments can, in some important matters, impose a uniformity of policy on all local authorities. When the council is discussing questions of major policy, the manager intervenes in the debate and advises the council as to the facts of the case and the issues involved ; in most local authorities the advice of the manager has a decided influence with the members. Similarly, the manager seeks the opinion of the council on important matters of policy involving his executive functions and is reluctant to make an executive order which would conflict with the clearly expressed opinion of the council. In this way, the sharp division of functions and powers, laid down by statute, becomes blurred in practice and more attention is given to the evolution of a policy agreed on by all than to the maintenance of a strict division of powers.

As in the case of the formation of policy, the supervision

of individual actions of the manager by the council is governed by common sense, rather than by statute. The council does not ordinarily requisition the manager to perform a certain act or demand all the information on a certain matter; instead, from time to time, reports are asked for or questions asked. For their part, most managers are only too anxious to bring important executive business before the council. In the larger authorities, the volume of executive business is so huge that only selected items of importance can be brought to the notice of the council; in the smaller urban authorities all cases of such executive business as town planning applications and applications for small dwellings loans are reviewed by the council.

In general, though its legal powers are severely limited, the elected council exerts a tremendous influence on the general working of the local authority. As a rule, council and manager work harmoniously together in the interests of the community. Occasionally differences do arise but in the author's experience, councils find themselves frustrated ten times more frequently by some action or inaction of a central department than by the operation of the managerial system.

A Typical Committee

This section deals with the working of the Housing Committee of the Dublin County Council as a practical example of the principles mentioned in the preceding section. This committee provides a suitable example because housing comprises a number of compact self-contained services which are important but not unduly complex.

The Housing Committee, which is a committee of the full house, was set up in October 1948 to deal with the council's functions under the Labourers' Acts and the Small Dwellings Acquisition Acts. The committee meets regularly once a month and there are special meetings from time to time—usually about three per year. Sites committees consisting of the area councillors, were set up for each of the four county electoral areas; these committees act as sub-

committees of the housing committee and deal with matters requiring special local knowledge. Sub-committees were set up from time to time to examine special problems such as rents of new council cottages or a programme for cottage repairs. The County Manager has delegated his executive powers in relation to housing to an Assistant City and County Manager who acts as Housing Director for Dublin City and County; for convenience, this Assistant City and County Manager will be referred to as the Manager or Assistant Manager.

The monthly meeting of the County Dublin Housing Committee deals with the whole range of housing activity. The meetings are held at 6 p.m. and usually last for three hours. The normal attendance is between 16 and 20 out of the total membership of 25. The following officials are present—the assistant county manager, the county secretary, the housing engineer, the engineer in charge of cottage maintenance, the staff officer in charge of site acquisition and the staff officer in charge of general housing matters; occasionally the medical officer, the county solicitor, the housing architect and the county accountant are present. The first item of the agenda of each meeting is the manager's Monthly Progress Report. This report (which is circulated with the agenda at least three days before the meeting) gives the up-to-date position of every housing scheme of which the council has approved. Each separate scheme and the number of houses involved is listed under the following groups—(*a*) Houses completed since October, 1948; (*b*) houses in course of construction; (*c*) tenders accepted and sanctioned; (*d*) tenders accepted, sanction awaited; (*e*) tenders invited; (*f*) site development in progress; (*g*) plans sanctioned, tenders to be invited; (*h*) plans completed, sanction awaited; (*i*) plans in course of preparation; (*j*) sites under consideration. In addition the reports give the number of men employed on the schemes and refers to any special matter requiring attention. The discussion of this report and matters arising from it usually lasts for over an hour. Then follows a report on progress under the Small Dwellings Acquisition Acts (under

which the council has already lent over two million pounds). On this report, the general administration of Small Dwellings Loans is discussed and if necessary a recommendation for further borrowing to finance the scheme is made to the Finance and General Purposes Committee of the Council. From time to time comprehensive reports are submitted to the committee on such subjects as—rents of council cottages, design of both urban houses and rural cottages and many problems requiring discussion and decision. Also on the agenda are notices of motion and questions put down by individual councillors. Most of the motions are formally moved and referred to the manager for report; when his report is submitted to a subsequent meeting the question is then discussed in detail. From time to time, deputations representing various interests are received by the committee.

The way in which the committee deals with the provision of a new housing scheme to serve a particular area is a good example of the merging of executive and reserved functions which occurs in practice. A general survey of housing requirements throughout the county has been made by the County Medical Officer and supplemented by the local knowledge of the councillors. When a particular area is to be considered, the sites committee concerned meets to agree on a final figure for the housing requirements of the area and, with this figure in mind, the sites committee accompanied by the appropriate officer inspect the available land in the neighbourhood. The sites thought most suitable for development are referred to the County Medical Officer, the Town Planning Officer and the Sanitary Services Engineer for formal report. The report of the sites committee together with the reports of the various officers are then brought before the housing committee. The committee advises the Assistant Manager to open negotiations to acquire any sites which receive general approval; if then there are not enough such sites to meet the housing requirements of the locality, the committee, after discussing the question, may request the officers to see if their objections can be overcome or it may ask the sites committee to seek

further sites in the area. The manager opens negotiations with owners of the approved sites with a view to purchase by consent on the basis of the figure given by the council's valuer. If the valuer's figure is unduly high (say over £500 per acre) or if special circumstances arise, the manager consults the committee before closing the deal. If the owner is not willing to negotiate, the assistant manager discusses with the committee whether the expensive and uncertain machinery of compulsory purchase should be set in motion. Once it is clear that the site can be acquired, plans for the scheme are prepared and submitted to the Department of Local Government for sanction. In many cases, the next step is to re-draft the plans and re-submit them to the Department. When the plans have been sanctioned, the manager invites tenders by public advertisement and submits the successful tenders to the department for sanction. The work is then put into the hands of the builder, whose work is supervised by the Council's clerk of works. All of these steps are reported to the committee in the Assistant Manager's Monthly Progress Report and any special matter of importance which arises is the subject of a separate report. When the scheme is nearing completion the County Medical Officer draws up a list of suitable tenants for the new houses. This list is prepared in accordance with the statutory regulations governing re-housing (preference for genuine agricultural labourers, families in one room with T.B., overcrowding or unfit premises, etc.) and also bearing in mind as far as possible the wish of the housing committee that preference should be given to persons residing in Co. Dublin for longer than five years and to persons residing within a reasonable distance of the particular scheme. This provisional list is brought before the local sites committee for their observations and in this way the special local knowledge of the councillors is made available to the County Medical Officer. The Medical Officer considers the views expressed by the councillors as to the inclusion or exclusion of any family and then submits his final recommendations for adoption by the Assistant Manager. It can be appreciated, from the above account, that with a reasonable

Manager and a reasonable council the work of a local authority can be efficiently and expeditiously carried out if the hard and fast rules of the managerial system are supplemented by a common-sense working arrangement.

The Work of the Councillor

Having considered the council as a unit, we must now examine the position of the individual councillor, the work he does and his attitude to that work. It will be obvious that most of the present portion of the paper must relate to the author's own experience and may not be typical of local authorities outside Dublin.

The first point to be emphasised is the huge amount of work involved. As a member of Dublin County Council, the author is automatically a member of the following three committees each of which meets monthly—the Finance and General Purposes Committee, the Housing Committee and the Town Planning Committee; in addition he has been nominated by the County Council to serve on the following bodies—The Rathdown Board of Assistance, the County Libraries Committee, the County Scholarships Committee, and the Governing Body of University College, Dublin. Other bodies to which the County Council nominates some of its members include—the County Vocational Education Committee, the County Committee of Agriculture, the Dublin Board of Assistance, the Balrothery Board of Assistance, the Boards of Grangegorman Mental Hospital, the Dublin Fever Hospital and the Meath Hospital. As a member of Dun Laoghaire Borough Council, the author is automatically a member of both the General Purposes Committee and the Housing Committee and in addition has been selected to serve on the Borough Vocational Education Committee, the Borough Libraries Committee and the Dean's Grange Burial Board. Nearly all of these committees and joint boards meet monthly; while a small minority of them transact their business in half an hour, many of the meetings last for three hours. In addition to the standing committees mentioned, special committees, usually consisting of five or seven

members, are appointed from time to time. At present (1952) the author is serving on a committee set up by Dublin County Council in connection with the proposed extension of Dublin City ; and on two committees set up by Dunlaoghaire Borough Council—one to examine the status of the Borough and the other to consider the question of a tenant purchase scheme for Council houses. It will be appreciated that regular attendance at these meetings consumes a large amount of time and energy.

A councillor has many other duties beside attendance at meetings. The labour of studying reports and general background information on problems under discussion can be very great. If a councillor wishes to play a full part in the work of the council, he must familiarise himself with both the statutory basis and the administrative machinery of the local government system, as well as keeping in close touch with local conditions and problems. Each councillor is an unpaid and hard-worked public relations officer for the local authority of which he is a member. Day after day, he is deluged with questions, criticism and suggestions. The councillor is berated because more services are not provided and because the rates are not substantially reduced. Local organisations are lavish in their invitations to councillors to attend their meetings while individual callers to his home punctuate his meals and his few leisure moments with a multitude of varied and sometimes impossible requests. Such intensive activity, both inside and outside the council, makes councillors thankful for those kindly editorials which remind them that they should not take their duties lightly and should remember at all times that they are servants of the public.

The value of the elective principle in local government lies in the nature of the elected members' approach to the problems involved. The councillor looks on local government as a means to solve personal human problems and consequently avoids the pitfall of looking on any administrative system as something good and sufficient in itself. This personal approach is responsible for much of the strength and also for some of the weaknesses of democratic

local government. The nature of this approach is best illustrated by an example and once again housing is suitable for the purpose. To an official of the Department of Local Government " housing " means a code of statutes built up over seventy years, a system of housing finance laid down by acts and regulations, minimum standards of housing for the whole country, the level of capital expenditure and a number of similar administrative problems. To the local authority official " housing " means the carrying out of a housing programme to the satisfaction of both the department and the council—it means planning, organising supervising and a host of other executive functions. But to the councillor, " housing " means something different ; it means not the solution of a number of administrative or executive problems but the resolving of a number of personal domestic problems. When a councillor talks of the housing question, he is thinking of the family he visited in their single room one Sunday afternoon. The mother apologised for the room being full of baby's washing and explained that the landlady wouldn't allow the family to use the yard except to fetch water in a bucket twice a day. When questioned, she said, " We're living here eight years. We've four children counting the lad in the pram there. Two died on us—one at six weeks and the other at nine months. I had a baby born dead last September. The doctor said it might be on account of always knocking myself against the edge of the table moving round the small room here. It's so hard to manage." Then came the inevitable question " Have we any hope of a house ? " and the usual answer " I don't know. I'll do all I can but I can promise nothing." To the councillor the housing problem is the aggregate of all such individual problems ; that is why, when an official remembers the terms of a departmental regulation and says that something can't be done, the councillor remembers the care-worn face of a harassed mother and says it *must* be done. It is essential that the personal approach and local knowledge of the councillor be combined with the trained administrator's awareness of the broader issues involved and knowledge of the means available to transform

policy into action. The best system of local government is that system which can fuse these two elements so as to produce the greatest benefit to the community.

In considering the position of the individual councillor, it remains only to discuss briefly the vexed question of "politics in the council chamber." During recent years, the purely local character of a corporation's or council's activity has to a large extent disappeared and the local authority has become increasingly concerned with the application and interpretation of national policy as it affects its own locality. We are not concerned, at the moment with the desirability or otherwise of this tendency but with the reaction of the national political parties to such a situation. The nature of this reaction is that described by Edmund Burke over 150 years ago when he wrote "Party is a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed.. For my part, I find it impossible to conceive that anyone believes in his own politics, or thinks them to be of any weight, who refuses to adopt the means of having them reduced into practice . . . therefore every honourable connection will avow it is their first purpose to pursue every just method to put the men who hold their opinions into such a position as may enable them to carry their common plans into execution, with all the power and authority of the state. As this power is attached to certain situations, it is their duty to contend for these situations." Thus, when local authorities began to be concerned with national policy, the various political parties became anxious to have direct representation on the local councils. At present candidates are put forward by the different parties in order that they may, if elected, voice the party's opinion on matters of national policy when these are discussed and also deal with local matters on the basis of their own individual opinions. It would be difficult for an observer attending a committee meeting to sort out the party affiliations of the different members since, in local matters, there are often very wide differences between members of the same

party. It is unfortunate that any political discussion, which does take place, is at the public council meeting and is sometimes the only item of business reported in the press. In general, discussion is on the merits of the question and party colleagues do not hesitate to oppose one another vigorously and vote accordingly. If the political parties did not contest local elections, the councils would be made up of pressure groups such as leagues of council tenants, local development associations, ratepayers associations, trades groups and the like. It is doubtful if local administration would benefit by such a change.

Local Government Reform

Local authorities in Ireland are in danger of becoming mere local organs of the central government. During the past 25 years, the local authorities have been made responsible by the Oireachtas for a huge number of additional functions. These additions have weakened rather than strengthened the local authorities because the only financial provision made was for additional grants from various central government departments whose power over local bodies was thus greatly increased. Until recently a local authority could not employ an additional temporary typist without express sanction of the Minister for Local Government; it cannot carry out the smallest work involving a a grant or a loan without first receiving loan sanction and then submitting plans sometimes in great detail. The interference of the Department is not only irksome but also harmful. Apart from the frustration experienced by councillors and local officials, the present set-up involves a waste of time, paper and manpower. It should be recognised that local authorities are responsible bodies in their own right, rather than agents of the central government and that the local officers are competent to design and carry out, without supervision any works approved in principle by the central department. The author is not hopeful that any marked improvement will result without a reorganisation of the system while the present high level of grants from central funds continues. Main roads and mental

hospitals could with advantage be taken over by the central government and grants reduced accordingly; the same applies to the functions still exercised by local authorities in the administration of justice—coroners and inquests, reformatories, and industrial schools, conveyance of prisoners, prosecutors and witnesses expenses, rents and expenses of courthouses. In addition the appropriate State department should take over the enforcement of national standards laid down by the central government leaving to the local authority the enforcement of standards adopted locally. The question of making over the local yield of certain licence duties to the local authority should also be examined. The author would be content to see local authorities exercising less functions, if only they could exercise them in real freedom.

In my opinion, the exercise of some quasi-judicial powers by the Minister for Local Government is open to criticism. Apart from the general principles involved, the Minister is too closely concerned in the prosecution of local government policy to be a proper judge of the issue where this policy conflicts with private interests. It would be preferable to transfer these functions to a special Judge of the High Court or a special administrative tribunal. The power of the Minister, to remove the members of a local authority for an indefinite period without assigning any specific reason should be amended. It should be sufficient for the Minister to have the power to make an order, after publication of the report of the inquiry, removing the council forthwith and ordering new elections within six months.

The managerial system and its possible reform is a difficult subject to discuss briefly. The now moribund County Administration Bill 1950 received the support of all parties in Dáil Éireann on its second reading and there seems to be general agreement that some amendment of the present system is desirable. There can be no doubt that the practice prevailing in the Dublin area, which is described in the paper, should be made general and put on a statutory footing; most of this could be done under section 16 of the County Management Act. In addition,

certain provisions of the County Administration Bill would be very welcome—e.g. the section requiring the manager to notify the council of his intention to create a new permanent post or to fill a non-statutory permanent post; or the section empowering local authorities to make agreements under which one of them can perform functions on behalf of the other. However, the transfer of the majority of executive functions from the manager to a committee of the council would involve difficulties. The huge amount of executive business, including such matters as the payment of Home Assistance, Town Planning orders, etc., involved in present day local government could be an immense burden on the elected councillors. Powers of delegation would exist but councillors are extremely loath to delegate even the smallest of their powers. Instead of dealing thoroughly with part of the executive business, they would probably try to cover the whole ground and so lose effectiveness.

Some of the difficulties of local government to-day are due to the fact that the basic structure of the system was fixed in 1898, when functions of local authorities were quite different. It is generally admitted that the size of unit for any given service should be as local as is compatible with the provision of an effective service. The need for local control is particularly important in the case of personal services where the need varies with the individual. For impersonal services, such as main roads or water supply, the need for close supervision by elected representatives is not so important and may be outweighed by the advantages of large scale organisation. It is sometimes difficult to distinguish the two groups. For example, the fact that hospitalisation is best organised on a regional basis, should not be made an excuse for the regionalisation of all the health services since many of these services can be more effectively administered by a comparatively small authority. A thorough examination of the whole structure of local government areas, functions and finance would prove of value.

The Administration of Municipal Health Services

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The title for this lecture, as submitted to me by the Civics Institute is one which could easily demand a whole series of talks if the subject were to be dealt with in exhaustive detail. I have considered how best to deal with it in the confines of one address and while giving a general picture of Health administration in Eire I have come to the conclusion that I should concentrate on its administration in the City and County of Dublin and again devoting more attention to its aspects in the City rather than in the County. I propose to commence by giving a very brief historical outline of the development of the Health Services.

DEVELOPMENT OF HEALTH SERVICES

The Public Health (Ireland) Act, 1878, is largely the foundation of the Public Health services in Ireland. The Act constituted Urban and Rural Sanitary authorities and made provision for Medical Superintendent Officers of Health. It also gave extensive powers relative to such matters affecting Public Health as the prevention of the spread of infectious diseases, sewage disposal, provision of water supplies, supression of nuisances, and cognate subjects all of the most vital importance to the health of the citizens. Naturally since this legislation was enacted over seventy years ago the powers granted therein have been extended, as circumstances dictated, by a variety of Acts the last and most comprehensive of which is the Health Act, 1947. These interim enactments dealt mainly with the prevention and cure of Tuberculosis, the medical inspection of school children, the establishment of Maternity and Child Welfare Services and the tightening-up of regulations concerning infectious diseases.

At this stage it may be of interest to note that the Health

Act of 1947 does not legislate in respect of Health Services other than what may be termed the personal public health services, viz. : Provision for Health Institutions, Mother and Child Service, Infectious Disease and Infestation, regulations concerning food, drink, medical and toilet preparations, home nursing, etc. The Minister for Health is the appropriate Minister for the foregoing as well as for any health services which were provided for in previous Acts and which are also personal health services, viz., treatment of Tuberculosis, School Medical Inspection, etc. On the other hand the Minister for Local Government is the appropriate Minister for the Sanitary Services (water, sewage disposal, baths and wash-houses, cleansing and lighting).

Dublin City and County

The Local Government (Dublin) Act, 1930, introduced the system of City Managership to Dublin. That Act divided the functions of the Dublin Corporation into two sections—(*a*) reserved functions and (*b*) executive functions. The reserved functions are those which are the responsibility of the members of the Dublin Corporation while all executive functions are carried out by the City Manager. The former include the provision of the necessary capital and revenue monies for the financing of the enormous range of activities of the Dublin Corporation and while there are many other duties reserved to the City Council this is the most important. The City Manager carries out all the executive and administrative work, but he is bound to confine these to the limits imposed by the City Council in their control of the purse. He can delegate any of his powers, functions and duties to Assistant City Managers.

The Dublin County Council is the Health Authority for the County of Dublin, including the Borough of Dun Laoghaire. In that capacity it is vested with practically the same powers as are vested in the Corporation for health purposes. Howth is part of the City of Dublin for all municipal purposes including Health. Following the passing of the Local Government (Ireland) Act, 1898, County

Councils and Urban and Rural District Councils were set up. There were half a dozen urban districts and five rural districts in County Dublin when the Dublin City boundaries were extended in 1900. The Local Government (Dublin) Act, 1930, incorporated the urban districts of Rathmines and Pembroke in the city and those of Blackrock, Dalkey, Killiney and Ballybrack in Dun Laoghaire. The rural district councils were abolished and their functions as sanitary authorities vested in the Dublin Board of Health. The City Manager is also the County Manager and the Assistant City Managers are also Assistant County Managers.

The Dublin County Council took over the functions of the Board of Health in 1942 (County Management Act). The Health Act, 1947, transferred the responsibility for the health services of Dun Laoghaire to the Dublin County Council so that it is now, as stated above, the Health Authority for the whole county. In all counties except Dublin the provision of Medical Assistance to necessitous persons is the responsibility of the appropriate County Council but in Dublin it is provided by the Dublin, Rathdown and Balrothery Boards of Assistance although a recent letter from the Department of Health indicates an intention to abolish these Boards and transfer their functions to a Joint Body, which incidentally would take over all the Health Services of Dublin City and County as well as of Grangegorman Mental Hospital Board. This proposed development is not referred to again in this paper as no decisions have yet been put in legislative form.

The Dublin Board of Assistance caters for the City and adjoining districts and the Balrothery and Rathdown Boards for the remainder of the County. In addition to their duties under Social Welfare they administer the Dispensary Services. The Dublin Board of Assistance maintains a most modernised hospital at St. Kevin's, James' Street, while the Rathdown Board has re-constructed and re-equipped its hospital at Loughlinstown (St. Colmcille's). Both institutions have the most up-to-date surgical and X-Ray equipment and are capable of affording treatment at least equal to that available in any other hospital.

Grangegorman Mental Hospital

Mention has been made of the Grangegorman Mental Hospital Board. This is a joint body with representatives from the Dublin Corporation, Dublin Co. Council and Wicklow Co. Council. The number of representatives from these bodies is determined by the average number of patients from each area. The mental patients from these areas are treated in two large institutions—Grangegorman (2,100 patients) and Portrane (1,570 patients). The total staffs of these hospitals number over 1,000 which includes Medical (22), Nursing (720) and Administrative Officers (30) and manual working (180) and farm staffs (50). The demand on the constituent bodies for the coming year is as follows :—

City of Dublin . .	£465,347	76·3%
County of Dublin .	£ 89,257	14·6%
County of Wicklow .	£ 55,385	9·1%
Total . .	£609,989	

The Mental Treatment Act, 1945, operated as from 1st January, 1947. By it Grangegorman Mental Hospital Board was constituted in its present form, and succeeded the former Joint Committee of Management. In 1921 that Committee changed the name of the institution from Richmond District Asylum to Grangegorman Mental Hospital. The Grangegorman Board is a corporate body.

It is proposed to give hereunder the cost of the Health services in the City and County, but before doing so it is of interest to take note of the extent of the financial help given by the State. As you are aware the Capital Costs of new Health Institutions have been, for some time, defrayed from Hospitals Trust Funds where the Minister for Health so approves. The cost can be paid either in full or in part as the Department of Health decides.

Expenditure on Health Services and Health Grant

Regarding the annual budgets of the Dublin Corporation and the Dublin County Council, a few figures may be of

interest. They are taken from the Volumes of Estimates for the financial year ending 31st March, 1953.

DUBLIN CORPORATION	£
Mother and Child Service	303,000
Infectious Diseases (excluding Tuberculosis) .	179,000
Tuberculosis Services	744,000
Hospital treatment for necessitous persons .	117,000
Ambulance Services	10,000
Miscellaneous	15,000
Grangegorman Mental Hospital . . .	448,000
	£1,816,000
Less Health Services Grant and Government Contribution in lieu of rates . . .	969,000
	£847,000

As 1*d.* in the £ produces about £10,000 in round figures in Dublin City these services require about 7/- in the £ out of the total rate of 31/- for 1952/53. The corresponding rate for these services in the county is about 4/- in the £.

It will be noted from the figures quoted above that the State contribution is a substantial one and amounts to more than half the total cost. Prior to 1948/49 the State actually contributed 50% of the cost of such services as Maternity and Child Welfare, Medical Inspection of School Children, Tuberculosis, while for the cost of treatment of Venereal Diseases the recoupment was 75%.

The grants from Government Funds are now provided for in the Health Services (Financial Provisions) Act, 1947. In that Act the Minister is empowered to prescribe such health services as he thinks proper to be recognised Health services. In respect of these it is laid down that the Standard Year for the purposes of the Act is 1947/8. It is provided that, with certain reservations, the State will recoup the Health Authority to the extent of 100% the amount by which the expenditure on recognised health services in any

subsequent year exceeds that of the standard year. When, however, the expenditure in any subsequent financial year exceeds twice the expenditure of the Standard Year, only 50% of that excess is recouped. Both the Dublin Corporation and the Dublin County Council have now exceeded twice the Standard Year expenditure although when the above-mentioned 1947 Act was passed it was generally believed that the doubling of the expenditure would not be reached for about ten years.

It may now be appropriate to give a survey of the extent of and method of administration in the most important of the Health Services, taking the City first. All the City Health Services are under the supervision of the City Medical Officer of Health who, in turn, is responsible to the City Manager.

Treatment of Tuberculosis

For the diagnosis of the disease the Corporation runs a central dispensary where all facilities for diagnosis are available. Mass Radiography and large plate Radiography are at the call of every citizen, free of charge, arrangements being made through the patient's doctor. At this central dispensary there are twelve doctors and 24 nurses and radiographers. When examination and diagnosis are complete, the patient is informed as to whether institutional treatment is necessary or desirable. If it is, arrangements are made for admission as soon as possible. At the present time, the Corporation has reached the stage when every female patient can be immediately accommodated in a Sanatorium—there is a short waiting list for male patients. The Sanatoria are :—

St. Mary's (Phoenix Park)	610 beds
Rialto	300 beds
Crooksling	250 beds
Ballyowen	240 beds
Pigeon House	50 beds
a total of	1,450 beds

In the first three of these institutions there are adequate and up-to-date X-Ray installations while in St. Mary's, Rialto and Ballyowen the most modern theatres for Thoracic Surgery have been constructed. The average cost of maintaining a patient in one of the Corporation Sanatoria for the year 1951/52 worked out at about £6 10*s.* 0*d.* per week but, of course, all such treatment is free—irrespective of amount of income. The aggregate staffs of the Sanatoria are 27 Doctors and 253 Nurses in addition to 4 Occupational Therapists, 5 Radiographers and 3 Physiotherapists.

Perhaps the most important step (in the prevention of Tuberculosis) taken by the Corporation in recent years has been the development of B.C.G. Vaccination. It is the endeavour of the Corporation Medical authorities to have every infant vaccinated under the B.C.G. Scheme and so develop protective immunity from the disease. A specially trained medical staff is engaged continually on this work.

One of the pressing problems in the past has been the desire, for economic reasons, of the bread-winner suffering from Tuberculosis to return to his work and this has resulted in large numbers resuming employment prematurely with disastrous results. Under the Health Act, 1947 (Infectious Diseases Regulations), payment is now made by the Local Authority—the only qualification for the payment being a certificate that the applicant is complying with the requirements of the Medical Officer regarding treatment and that he is prevented from making reasonable and proper provision for his own maintenance or the maintenance of his dependants. The Minister has made regulations under the Act regarding such payments and the following are the weekly payments normally payable :—

Single persons . . .	£1 12 0	With reduced amounts if sanatorium treatment is being provided.
Man and Wife . . .	£3 8 0	
Each Child under 16 . .	£ 8 0	
Each Child over 16 . .	£ 12 0	
Domestic Help allowance .	£1 2 0	
Rent up to a maximun of .	£0 15 0	

The annual cost of these allowances in the City is about £150,000.

MATERNITY AND CHILD WELFARE

Eight Doctors and 49 Nurses are engaged on this very important section of Public Health. The central clinic and headquarters are situated in Lord Edward Street and there are twenty-five subsidiary clinics throughout the City and Suburbs. At all these centres advice is always available for expectant and nursing mothers. In the past year or so a comprehensive scheme has been worked out with the three large Maternity Hospitals in the city and a special staff of doctors and nurses has been appointed in each Hospital. Under this scheme the Hospital assumes neo-natal responsibility in respect of all infants up to the age of six weeks. After that age the child is registered on the books of the Corporation centre at Lord Edward Street so that medical and nursing service is continued. Each of the Hospitals has constructed additional accommodation with all modern equipment for this neo-natal service which is free to all mothers who wish to avail of it. These neo-natal additions to the Hospitals were financed out of Hospitals Trust Funds and the annual expenditure on them is defrayed by the Corporation as part of the Health Service.

Under this Section, the Corporation maintains a hospital for sick babies at Ballymun (St. Clare's—80 beds). The Hospital caters for infants up to two years only and cases are admitted from the Clinics, the Children's Hospitals, Maternity Hospital Units (just referred to) and from Dispensary Doctors and Private Practitioners.

Diphtheria Immunisation is carried out in the Child Welfare Clinics and an intensive campaign for its development is continuously carried out. The fact that there has not been any death from diphtheria in Dublin for two years and only one in the last four years is proof of the efficiency of the immunisation.

Under the Maternity and Child Welfare Scheme the Infant Aid Society distributes free about 2,000,000 pints of milk to children and expectant mothers while the latter (by arrangement with the Catholic Social Service Conference) are supplied with free meals.

School Medical Service

The School Medical Service is responsible for safeguarding the mental and physical health of children attending the national schools of the city. The service was established by virtue of the Public Health (Medical Treatment of Children—Ireland) Act, 1919. Five doctors and nine nurses are engaged on the work. The children are examined for physical ailments related to eyes, nose and throat, teeth, ears, skin, heart and circulation, lungs and nervous system. The children are also examined from the point of view of personal hygiene and treated for illnesses arising from its neglect. The headquarters of the service is in Lord Edward Street and adequate dental clinics have been set up in Cornmarket and at other centres. Arrangements are made with city hospitals for the treatment of the afore-mentioned ailments. Having regard to the large number of schools examined under the service it was, until recently, only possible to arrange for the examination of a child every four years but an increase in staff has now resulted in this period being reduced to about two years and an annual examination is aimed at. The results of the School Medical Inspections and consequential treatment (where necessary) pay handsome dividends in improving the health of the future generations.

Hospital Treatment for Necessitous Persons

The general City Hospitals not under the control of the Corporation provide free or partly free treatment for citizens whose means do not permit them to pay (or partly pay) for their hospital treatment. In order to recoup in part these hospitals for the loss thus sustained the Corporation raises a rate of 1/– in the £ annually, producing about £120,000 and this sum is distributed to the Hospitals in proportion to the numbers treated in each and is based on returns supplied by the Bed Bureau.

Infectious Diseases

I have dealt at some length with Tuberculosis but the Health Act, 1947, empowers the Minister for Health to

specify by regulation what are infectious diseases. He has listed over 40 of such diseases and hospital treatment is available for persons suffering from or suspected to be suffering from an infectious disease. The Dublin Fever Hospital Board controls Cork Street Fever Hospital (280 beds), while the Corporation maintains a Fever Hospital at Vergemount, Clonskeagh (180 beds). A statutory annual demand is made on the Dublin Corporation and Dublin County Council by the Fever Hospital Board (Cork Street)—the respective amounts payable being £74,000 and £25,000.

Immunisation against small-pox is provided by vaccination services. The Corporation maintains a Disinfecting Department at a cost of £15,000 a year and ancillary services to control the spread of disease include a Rodent Control Scheme and a D.D.T. disinfestation section. Under the Infectious Diseases Regulations, 1948, all used clothing, rags, etc., are disinfected on importation.

A Bacteriological and Pathological service is also provided on the most up-to-date lines, the former being administered by the City Bacteriologist.

A Port Medical Officer with Port Health Inspectors inspects the shipping activities at the port of Dublin and these inspections cover crews' quarters, imported foodstuffs, destruction of rodents and vermin on ships, prevention of the importation of infectious disease, etc. The Port Medical Officers carry out duties of a like nature, so far as they are appropriate, in the Airport at Collinstown.

Food Hygiene

From time to time legislation has been enacted to safeguard the Public Health by preventing the sale of unfit food and drink. The Sale of Food and Drugs Acts, 1875 to 1935, the Slaughter of Animals Act, 1935 and the Milk and Dairies Act, 1935, are typical. Under Part V of the Health Act, 1947, the Minister is given the widest powers to enable local authorities to take the most comprehensive steps to maintain the highest standards for food and drink and the sale thereof in all descriptions of shops, in hotels, restaurants, cafes, clubs, canteens, etc. This part of the

Act came into operation on 1st October, 1951, and under the control of the City Medical Officer is administered by a staff of Health Inspectors.

The City Analyst's Department analyses and investigates from day to day samples of water, milk, foods, drugs, etc. Prosecutions follow where analysis shows a deficiency in the standards laid down. In a year about 13,000 samples are analysed. Of these about 7,000 samples refer to areas outside Dublin city as, by arrangement, the City Analyst acts for many local authorities throughout the State.

Miscellaneous

Under the Registration of Maternity Homes Act, 1934, registration of Maternity Homes is necessary, while under the Midwives Act, 1944, all midwives who intend to practise must notify the City Medical Officer of intention to do so. Under the first Act the number of Maternity Homes and Institutions on the Register was 36.

An adequate Ambulance Service is provided at a cost of about £10,000 a year.

Free School Meals are made available in the National Schools of the City—between 7 and 8 million meals are provided annually at a total cost of £143,000.

By arrangement with the Catholic Social Service Conference daily hot dinners are provided at a purely nominal cost for necessitous men and women—the contribution from the Rates being over £17,000 per annum.

Under the Scheme for the Welfare of the Blind a total sum of £57,000 is provided annually. Of this, £45,000 is paid in weekly allowances to blind people and over £7,000 to approved institutions for the Blind.

Health Services in County Dublin

I shall deal very briefly with these. Generally speaking all Health Services in the City have their counterpart in the County. For the diagnosis of Tuberculosis two clinics are available—one at the Meath Hospital and one in Dun Laoghaire. X-Ray plant is installed at the former. Treatment is provided at the following Sanatoria by arrangement

with the authorities thereof: Peamount, Newcastle, Rialto, St. Mary's, Crooksling, Ballyowen and Pigeon House.

As in the City, allowances are paid to Tuberculosis sufferers undergoing treatment, the annual cost being about £40,000.

While the Maternity and Child Welfare Scheme is not as comprehensive as that for the City, clinics are provided at Dun Laoghaire and Blackrock, and a medical and nursing staff is available for mothers and their infants.

Under the School Medical Service the Schools of the County are inspected regularly and institutional treatment for tonsils and adenoids, eye defects, skin diseases, rheumatism, etc., is provided. Supplies of spectacles are available and dental treatment given.

The County Health Services also provide for the treatment of infectious diseases, the immunisation of children against smallpox and diphtheria, the enforcement of the regulations covering Food, Drugs and Food Hygiene. School Meals are provided only in Dun Laoghaire and Balbriggan. The costs of the Health Services in the County Dublin are financed under the Health Services (Financial Provisions) Act, 1947, as explained in the case of the City above.

Sanitary Services (City)

The intention in this paper was to give a summarised account of the administration of Health Services proper. These have been interpreted as embracing what may be called the personal services. It need hardly be said that the Sanitary Services are equally important from the point of view of the health of the City and County. They are :—

(*a*) The construction and maintenance of sewers and drains.

(*b*) The maintenance of a pure and adequate water supply.

(*c*) The cleansing of the streets and the removal and disposal of domestic refuse.

(*d*) The lighting of the streets.

These are a group of civic activities known as Sanitary Services and it may be of interest to state that in the year ending 31st March, 1953, it is estimated that these Services will cost the ratepayers a sum of £890,000 the equivalent of a rate of 7*s*. 5½*d*. in the £.

The enormous increase in building in Dublin has rendered the present main Drainage System inadequate and work has now started on a supplemental scheme known as the North Dublin Drainage Scheme, the first section of which will be completed in 4 years at a cost of one and a half million pounds.

The average consumption of water in the City is 45 gallons per head per day. The chief sources of supply are from the reservoirs at Roundwood, Poulaphouca and Bohernabreena.

Housing does not come within the ambit of this paper but it is so closely related to the health of the city that a few words concerning it are not out of place. The efforts of the Corporation in endeavouring to solve the housing problem are indicated by the fact that of the total indebtedness of the city (£28,000,000), £21,000,000 is attributable to Housing, i.e. 77%. These figures include the loan of £5,000,000 just raised. When this has been expended the Corporation will have provided over 37,000 houses. It is estimated that these will accommodate 185,000 persons or 34% of the city's population.

From the foregoing it can be said emphatically that the financial contributions of the citizens towards the Health and ancillary services are on a generous scale. If the proposed new Health Bill (now before the Oireachtas) is passed into law, a further substantial increase may be expected which will in turn have to be met by the ratepayers and taxpayers. The rate of expenditure on all these amenities should be determined by an enlightened public opinion. It remains to be stated that the citizens, in return for this vast annual expenditure, can only hope that its financial sacrifices will be rewarded by a healthier population in a city from which slumdom has been eliminated.

Rateable Valuation

By R. H. WHITE, B.E., B.Sc.

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This is an appropriate year for a lecture on valuation as 1952 marks the centenary of the Act on which our present system of valuation is based. Valuation, as we know it to-day, is the result of a gradual development over many centuries which in this country has followed more or less along the English lines, at least up to 1852. It is generally called Poor Law Valuation but this term is incorrect and out of date. The proper title is Rateable Valuation. In recent official publications the name has been changed from P.L.V. to R.V. Rateable Valuation is simply a method of distributing the burden of local taxation and is not in itself a tax. Nowadays it is also used as a basis for electricity charges, licence duties, schedule A Income Tax, as well as many other purposes. This paper is only concerned with the question of valuation for rating purposes.

If a rate demand note is examined it will be noticed that the rates may be roughly divided into two categories :—

(1) *Local Services* such as roads, sanitation, water, street lighting, housing, etc.

(2) *Relief of Distress* such as Health Services, unemployment relief, public assistance, etc.

The latter is equivalent to the old Poor Rate and the former to the old County Cess. These are nowadays on one demand note but at one time they were separate and were collected by separate bodies.

TAXATION IN IRELAND

Ireland followed, more or less, the English system of taxation. Before the *year* 1826 there is no record of any systematic valuation but in that year an Act was passed

which provided for making a uniform valuation of the several baronies, parishes and other divisions of each county in Ireland. This valuation was to proceed as the Ordnance Survey of any county or division of county was completed, the Lord Lieutenant being authorised, on receipt of the map or plan from the Officers of the Ordnance Survey, to appoint a Commissioner of Valuation. It was the First Government Valuation of Ireland for rating purposes. Several amendments were made to this Act and it was eventually repealed by the Valuation Act, 1836, which amended and consolidated previous Acts.

Act of 1836

This Act for the first time in Ireland laid down the net rent as the basis of valuation, in effect the annual letting value of each piece of property over and above rates and costs of repairs, insurance and maintenance.

Drawbacks of 1836 Act

The main drawbacks in the 1836 Act were :—

(1) It did not include among the list of rateable hereditaments, mines, roads, canals, mills, and tenements under £5 value.

(2) The hereditaments were valued collectively in each townland and not separately according to occupation. Local applotters had to determine each occupier's proportion.

(3) There was no provision for amending the valuation from time to time according as values might alter.

1846 Act

To remedy these defects the 1846 Valuation Act was passed. This contained provisions for making a tenement valuation on the basis laid down in the 1838 *Irish Poor Relief Act.* This latter Act enumerated a list of rateable hereditaments and also those entitled to exemption. In fact some of these properties exempted to-day base their

exemption on Section 63 of this Act. It was from the 1838 Act that the term Poor Law Valuation was derived to distinguish the valuation for Poor Rate from valuation for other purposes. The 1846 Act arranged also for the valuing of the remaining unvalued counties, according as the Ordnance Survey of them should be completed. Provision was also made in this Act for the co-ordination of future valuations and any necessary revision of valuation but it did not provide for fusing the several systems and was finally repealed by Valuation Ireland Act, 1852.

Griffith Valuation

The 1852 Act got the name of Griffith's Valuation from the Commissioner at the time, Richard Griffith. It provided for one uniform valuation of lands and tenements in Ireland which may be used for all public or local assessments and other rating. This general valuation was completed in 1865 and was a colossal undertaking involving the survey and valuing of every piece of immovable property and the preparation of a cadastre consisting, with accompanying maps, of several thousand volumes. In this Valuation List were included the valuations made under the 1846 Act, with the necessary corrections and revisions. Ireland was in advance of both England and Scotland in the matter of a uniform valuation for rates and taxes for the whole country with one central Valuation Authority Scotland followed suit in 1854, but England only adopted this system in recent years.

Land Valuation

Griffith's Valuation fixed the valuation on land with reference to the net annual value based on specific average prices of certain articles of agricultural produce. Land (except that in the Boroughs of Dublin and Waterford) has continued to be valued on this basis. Section 65 of the Local Government Act of 1898 provides that in a general revaluation of a County Borough land is to be valued in the same manner as houses and buildings.

Basis of Valuation

The basis of valuation in regard to houses and buildings was the *net annual value, that is to say, " the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average cost of repairs, insurance, and other expenses (if any), necessary to maintain the hereditament in its actual state, and all Rates, Taxes, and Public Charges, if any (except Tithe Rent Charge) being paid by the tenant."*

No provision was made in the Act for a basis to be used in valuing rateable hereditaments other than lands and buildings, but case law has established that these be valued on the same basis as houses and buildings, i.e. on their letting value.

Rateable Hereditaments

Section 12 of Griffith's Valuation enumerates the list of rateable hereditaments as follows :—

(1) All lands, buildings and opened mines.
(2) All commons, rights of common, all other profits to be had or received or taken out of any land.
(3) All rights of Fishery.
(4) All canals, navigations, rights of navigation.
(5) All Railways and Tram Roads.
(6) All Rights of Way and other Rights or Easements over land and the tolls levied in respect of such rights and easements and all other Tolls.
(7) In the case of lands or buildings used exclusively for public scientific, or charitable purposes, half the annual rent derived by the owner or other person interested in same.

Reclaimed and Drained Land and Agricultural Buildings

Section 14 of the Act stated that the valuation was not to be increased on account of any drainage or reclamation or erection of any agricultural out-offices or permanent agricultural improvements until 7 years had passed after completion of such work.

EXEMPTION

Section 16. This Section deals with exemptions, and lays down that no hereditament shall be deemed to be exempt unless it is altogether of a public nature or used exclusively for charitable or scientific purposes. It should be particularly noted that to gain exemption premises must be used exclusively for public charitable and scientific purposes. Recently Ballyroan House for T.B. Patients and Peamount Sanatorium failed to gain exemption because the Court held that they were not used exclusively for public or charitable purposes. As a matter of interest voluntary Hospitals in England are rateable.

Recently, in England, the Institute of Industrial Psychology were held to be rateable because the premises were not used exclusively for scientific purposes.

FIRST APPEALS

Section 17. The valuation lists when complete are to be sent to the Secretary of County Council, Town Clerk, or Borough Manager of the area. This is done at the end of February. The lists are then left open for public inspection for 21 days. Nowadays most of the occupiers whose premises have been revised are notified by post. Any person aggrieved by such valuation has the right of appeal within 28 days to the Commissioner. This appeal should be in writing and should state the grounds for complaint. First appeal is simply to the Commissioner and is informal in character.

The Commissioner delegates, generally, a second valuer to inspect the premises, the owners or occupiers of which have appealed. After inspection, the appeal valuer reports to the Commissioner. Should it appear from such a report that the valuation or area requires amendment, the Commissioner may alter or amend valuation or area and also any other tenement against which there is no appeal but which in the Commissioner's opinion is similarly circumstanced.

Circuit Court Appeal

Section 21. A List of Valuations which the Commissioner has altered or refused to alter is then sent to the Secretary of County Council, Town Clerk or Borough Manager as the case may be. The latter must make Commissioner's decision known to the public within 3 days after receipt. Any person aggrieved by such decision may within 21 days lodge an appeal to the Circuit Court. This appeal must be in writing duly signed by appellant or his known agent. If it affects the valuation of other tenements, notice is to be given to persons interested. Appellants must lodge £5 Recognizance within 5 days after notice of such appeal and sufficient securities for costs.

The Circuit Court hears all parties directly or indirectly concerned with such appeals and awards such costs as it thinks fit. The decision of the Court is final on a matter of fact but appeal may be made to the High Court on a question of law by way of a case stated.

Annual Revision

Provision is made for the necessary Revision of tenements and hereditaments whose limits have been altered or whose annual value is liable to frequent alteration, such as Fisheries, Railways, Canals, Tolls of Roads, Bridges, Mines, Gas and Waterworks, and Buildings. Every Rate Collector makes out a list of tenements requiring revision and any ratepayer may also make out a list of tenements which in his opinion requires revision. These lists are forwarded to the Secretary of the County Council, Town Clerk or Borough Manager as the case may be on or before the 15th June each year. They are left open for inspection for 10 days and are sent to the Commissioner on the 27th June. The Commissioner may accept a supplemental list up to the date of commencement of the Revision of the particular district concerned. Persons may appeal against such Revisions in the same manner as before-mentioned. The total valuation of lands of any townland is not to be increased or decreased at hearing of

such appeal. Exceptions are made in cases of lands washed away by the sea or lands on which houses have been erected.

In Griffith's Valuation it was intended to have a general revaluation every 14 years but this was never carried out.

Dublin and Waterford County Boroughs are the only two districts revalued since original Act. Four different attempts were made to have the entire country revalued, the last being in 1938, but none reached the Statute Book.

In recent years some Local Authorities have become aware of the anomalies in valuations in their areas and have listed all the buildings in these areas in the Annual Revision with resultant substantial increases in the valuation and a better distribution of the rates.

Galway was one of those where a general Revision of valuation of all buildings was carried out with a resultant increase in valuation from £43,814 to £66,743, an increase of £22,929 or approximately 52%. In Buncrana, another area generally revised, the buildings were increased from £6,544 to £10,381 in 1951, or approximately 58%.

The arguments usually put forward against applying for a General Revision are increased E.S.B. charges, Licence duties, Income Tax, increase in joint contribution to the county rate.

In all Revisions of Valuation the latest publications of the Ordnance Survey are to be used.

It will be noted that the Commissioner has no power to List premises for valuation under this Act although he is often blamed for doing so. (There is one exception under the 1931 Railways Valuation Act he has power to List Railways' hereditaments for quinquennial valuation.)

VALUATION (IRELAND) ACT, 1854

Exemptions

This Act instructs the Commissioner to distinguish all hereditaments of a public nature or used for charitable purposes or for the purposes of Science, Literature and the Fine Arts (Societies supported by voluntary contributions

and making no dividends between its members). All such hereditaments are deemed exempt but half the annual rent derived therefrom is rateable.

The main exemptions are lands and buildings used for :—

(1) State purposes (State Lands, Government Offices, Barracks, etc., Gaols).
(2) Public purposes (Parks, Public Libraries, Docks).
(3) Public Worship (Churches, Chapels, etc.).
(4) Charitable purposes.
(5) Literature, Fine Arts.
(6) Lighthouses, buoys, beacons, and all light dues and other rates, fees or payments accruing to or forming part of the Mercantile Marine Fund and all premises belonging to the general lighthouse Authorities or to the Board of Trade.
(7) E.S.B. Main Generating Stations and Main Transmission lines (Ardnacrusha, Liffey, etc.), but not undertakings acquired by them.

Section 13 of Griffith's valuation stated that water power was to be valued. This was repealed and replaced by Section 7 of 23 Vic., Cap. 4, which laid down that water or other motive power was to be valued but no machinery except such as was used for the production of power.

The costs of the Annual Revision of Valuation is partly met by contributions from the counties amounting to a total of £6,295. Amounts paid by each county are enacted in Valuation (Ireland) Act, 1874, and have remained the same to to-day.

The following Acts were passed to cover specific cases which arose at various times.

Public Health Act, 1878

Lands acquired for the purpose of a burial-ground shall while used for such purposes be valued at same rate as before acquisition.

ADVERTISING STATIONS (RATING ACT), 1889

This clarified the position of advertising stations on land and buildings and land, the valuation due to such stations being added to the land valuation or building valuation concerned generally.

LOCAL GOVERNMENT (IRELAND) ACT, 1898

This Act empowered the Co. Borough Council to apply for a Revaluation and to pay a sum not exceeding one-half of the costs of such revaluation. It was also enacted that the land in the borough should be valued in the same manner as buildings.

DUBLIN RECONSTRUCTION (EMERGENCY POWERS ACT), 1916

By this Act buildings erected after destruction or damage were not to be valued at a sum larger than the valuation on 1st April 1916 for a period of 12 years from passing of the Act.

AIR RAID PRECAUTIONS ACT, 1939

Air Raid shelters were made exempt from valuation under this Act.

1931 RAILWAY VALUATION FOR RATING ACT

This Act applies only to Railway hereditaments proper and institutes a quinquennial valuation for the Railways. It also establishes the agricultural value of the land as the minimum valuation for running line and one-third of the 1914 net annual value as the minimum valuation for non-running line.

METHODS OF VALUATION

Valuation is not an exact arithmetical formula and is only an estimate. In arriving at it the valuer must take into consideration: the situation, size, layout, condition, maintenance costs, insurance, etc., and the rents of comparable premises.

In 1852 the rent was a natural method to arrive at the valuation. There were few freeholds and most of the lands and buildings were rented. Houses, shops, and lands presented no difficulty in valuation. The Act, however, failed to lay down rules as to how properties which were seldom, or never, let were to be valued. Several methods have been put forward to overcome this difficulty and have been accepted by the Court where there is no other evidence.

Contractors' Method

The commonest of these methods is the "*Contractors Method.*" This assumes that a hypothetical tenant could reasonably be expected to pay in the form of rent a percentage, say 4% or 5% on the cost of the buildings and the value of the site. Take for instance a building costing £10,000 to erect on a site costing £1,000. This money could have been readily invested at say 4% so that it is not unreasonable to say that it is worth a rent of £440 net to the tenant. At the present moment factories are letting at 10% of the cost of erection. In pre-war days 8% was generally obtained in letting houses but this included rates and the cost of exterior maintenance.

Profits Method.

Another method is known as the "*Profits Method.*" To see what reasonable rent could be obtained for the premises, the profits are examined. A hypothetical tenant would then see what sum he could pay after making due allowance for working expenses, depreciation, interest on capital, tenant's profits. Care must be taken in this method, as profits may be low, due to bad management or high, on account of the personality of the occupier. The profits method is suitable for such properties as Tolls, Tramways, gasworks, quarries, mines, gravel pits, sand pits, etc.

The profits method has been developed over a period of one and a half centuries, and the legal decisions which shaped this method early in the nineteenth century laid the foundations of 'net annual as defined in the Parochial

Assessment Act of 1836, the main features of which remain unaltered to this day. The method originally arose from the rating of Tolls. Very little argument was necessary to prove that the net Tolls were the true measure of the occupier's ability to pay. Hence from the total Toll receipts deductions, for expenses, maintenance and a tenant's share are allowed to arrive at a figure that would be necessary to tempt a hypothetical tenant to rent the Tolls. This is essentially the profits method.

Square Yard Basis

A third way often advanced to arrive at the valuation is the *Square Yard* Method. This is a comparative method and is generally used for similar types of property. The floor area in yards of a residence (whose net annual value is known) is divided into the valuation, and the figure obtained is used as a basis for valuing similar houses, with due allowances for situation, etc.

Hotels Valuation.

In hotels, also for comparative purposes; so much a bedroom is often taken for valuation. Several hotels which have been valued already are taken, and the number of bedrooms divided into the valuation gives so much per bedroom for valuation. This is then used to arrive at the valuation of other hotels in the neighbourhood—again allowance being made for condition, site, etc.

ANNUAL REVISION

It would perhaps be as well to explain how the Annual Revision is carried out by the Valuation Office. About the end of June the Lists of buildings, lands, etc., requiring Revision are forwarded from the Town Clerks, County Council Secretaries and Borough Managers. On arrival they are first sorted into three separate divisions: (1) Dublin and Districts, (2) Central, (3) Southern.

Dublin and Districts comprises Dublin City, Bray,

Dunlaoghaire, Rathdown I and II, Celbridge I and II and Balrothery.

Southern includes the whole of Munster and Counties Carlow, Kilkenny, Wexford, and Galway.

Central includes the rest of the 26 Counties including the 3 Ulster Counties.

The Lists are sorted out in Districts (mainly the Old Rural Districts in the case of the Counties). Valuers are duly allotted to certain areas and proceed to inspect the hereditaments and tenements in the List. They have no power to go outside the lists. The requests for valuation generally include new buildings, extensions to old buildings, improvements to old buildings, divisions of land, etc. Having completed his district the Valuer returns his documents, maps, office books, and note books to the office where the changes are checked and duly noted in the County Valuation Lists. The whole Revision is completed by the end of February when new Valuations are duly forwarded to the Town Clerk, County Council Secretary or Borough Manager as the case may be.

The Lists are left open to the public for 21 days and any appeals received within 28 days are duly forwarded to the Commissioner. These first appeals are sorted in the same manner as the Revision Lists. They comprise objections to increased valuations principally. An appeal valuer is sent out to investigate the appeal and he reports to the Commissioner in due time. The Commissioner having received these reports, alters, or refuses to alter, the valuation as the case may be. It is generally the month of January by the time the results of the first appeals are issued. Appellants still dissatisfied may appeal within 21 days to the Circuit Court that is being held within the next 40 days. The Appeal Valuer is deputed to defend the valuation before the Court.

In the 26 Counties there are some 1,200,000 hereditaments the total valuation being about £13½ millions. This year there are almost 42,000 cases for Revision or about 3% of the total number of hereditaments in the country. Last year there were nearly 3,600 first appeals and something

over 300 appeals to the Circuit Court. To carry out this work there is a Commissioner, Chief Staff Valuer, 2 Staff Valuers, a Secretary, 30 Valuers and a clerical staff of about 60 members.

The same staff also carry out Valuations for Probate, Estate Duty, Old Age Pensions, Compensation, and issue maps, certificates, etc.

Attached are *the present* (1952) *valuations of the principal towns in the* 26 *Counties with the population and rates also shown.*

	Population	*Valuation*	*Rates*
Dublin Co. Boro'	506,051	£2,591,442	30/7
Cork Co. Boro'	75,590	264,705	33/-
Dunlaoghaire Boro'	44,674	257,326	27/9
Limerick Boro'	42,970	157,147	36/10
Waterford Boro'	28,269	97,707	33/-
Galway Boro'	20,370	79,960	39/10
Dundaik U.D.	18,562	63,540	31/11
Bráy U.D.	11,085	50,705	30/3
Drogheda U.D.	15,715	42,540	27/6
Sligo Boro'	12,920	36,229	38/6
Tralee U.D.	9.990	29,584	38/6
Wexford U.D.	12,296	28,690	34/4
Kilkenny U.D.	10,291	27,720	34/6
Clonmel U.D.	9,857	27,057	32/-

Total Valuation in 26 *Counties about* £13½ *millions.*

Compare

Valuation of principal towns in 6 *Counties.*

	Population	*Valuation*	*Rates*
Belfast	443,143	£3,354,908	14/-
Londonderry	50,098	238,001	15/-
Bangor	21,399	198,421	13/9
Portadown	17,251	91,190	17/-
Lurgan	15,600	59,907	18/8
Ballymena	14,223	71,224	18/6
Lisburn	14,000	80,853	15/7
Newry	13,174	57,440	15/6
Newtownards	12,231	53,911	14/-
Larne	12,051	70,838	15/-
Coleraine	10,700	69,184	15/10
Armagh	10,000	46,000	17/7
Carrickfergus	8,500	61,247	15/6

Total valuation in 6 *Counties about* £7¼ *millions.*

Comparison between the rates in the 6 Counties and those in the 26 Counties is difficult. In those of the 26 Counties are included charges for Unemployment Assistance which are not included in the 6 County rates but *they* have an education charge which is not in our rates (Vocational Education). Also profits from Tramways, Gasworks and Electricity go to reducing the rates, particularly in the towns. Derating is more or less offset by means of a block Grant from the Government. The higher valuations in the 6 Counties naturally make for a lower poundage rate. The Agricultural Grant in the 26 Counties tends to relieve the rates on Agricultural land.

VALUATION IN THE 6 COUNTIES

In the 6 Counties the basis of the present valuation system is the same as in the 26 Counties—namely Griffith's Valuation.

The Valuation Acts, Amendment Act (N.I.), 1932, stated that in all general revaluations land (apart from agricultural land) was to be valued on the same basis as buildings. (Defined by Section 11 of Griffith's Valuation.)

Railways are valued under a Special Act of 1932, in which there is prescribed a minimum valuation where the profits method would give an unreasonably low or even a nil valuation.

The 1924 Valuation Act prescribed a new basis for estimating net annual value of houses and buildings in place of Section 11 of the 1852 Act. It laid down, that for the purposes of Annual Revision, the net annual value of all houses and buildings (with exception of property to which the Increase of Rent and Mortgage Interest Restrictions Act (1920) applied) be taken as the amount at which the valuation would have been fixed in 1914, with the addition of 15%—subject to a maximum, represented by its actual letting value, according to Section 11 of the Act of 1852. This was only a temporary measure, introduced pending a general revaluation of Northern Ireland.

A Bill for providing for quinquennial general revaluations was passed in 1932 and it repealed the 1924 Act basis, reverting once again to Section 11 of 1852 Act for the definition of net annual value. Agricultural buildings and land and Railway hereditaments were excluded from this Act.

Section (2) of the Valuation Acts Amendment Act (N.I.), 1946, provides the basis for estimating the net annual value of buildings and houses for Annual Revisions, carried out before the next general revaluation. This basis is the net rent in 1939.

Derating

The Rating and Valuation (Apportionment Act), 1928, and the Local Government (Rating and Finance) Act, 1929, as amended by the L. G. (Finance) Act, 1936, introduced a scheme to relieve hereditaments occupied and used in connection with productive industries and freight transport undertakings. It also provided for total exemption from rates of Agricultural land and buildings.

Reliefs : (1) Agricultural Land—Total Exemption.

(2) On Fisheries—Three-fifths Exemption.

(3) On other Derated hereditaments main industrial and freight transport hereditaments—Three-fourths Exemption.

In recent times there has been a certain amount of objection to derating industrial undertakings which are making good money. The derating was introduced at a time of industrial depression which has now passed. It is felt that industries could now afford to make a considerable contribution towards the rates and thus take some of the burden off the ordinary householder. The General Revaluation now in progress in the 6 Counties was intended to be completed by the 1st April 1951, but now it is not expected to be finished until 1954. At present valuations there are about half the fair current net rents ; here, they are about one-third.

OTHER VALUATION SYSTEMS

Rating of Site Values

Briefly, this system is to value only the site in order to arrive at a figure on which rates should be calculated, ignoring the value of the buildings. Either the annual value, or the capital value of the site is taken. The system tends to injure the small man who is not financially strong enough to develop his site to the full. There is also the question as to whether potential value should be taken into account when valuing the site. The buildings in some cases were also to be valued, the idea being to get the owner of the site to pay a part of the rates as well as the tenant.

Recently in England there was a Committee of enquiry into the *Rating of Site values* which decided against it by a majority of 6 to 3.

The countries which have most successfully operated the site value system of rating are New Zealand and Denmark. Here potential development value was rated conservatively. In British Columbia high assessments on sites hindered rather than stimulated development and caused confusion and some bankruptcy of owners. The head of a capital city in a certain state arguing against site values gave as his reasons :

(1) Owners of large buildings, housing perhaps hundreds of people and contributing largely to density of traffic, are called upon to pay no greater charges than are owners of buildings housing merely a few.

(2) Similarly large buildings because of this system pay much less per head for water and sewerage than do small buildings.

Other countries using site value system : Australia, Kenya, Transvaal, Alberta.

Rating of Capital Values

This simply substitutes the capital value of the hereditaments for the annual value. In this case there is a shift

of the rates burden as compared with the annual value system. Capital value will vary according to the following factors :—

(1) The security of the income from the property.
(2) Age of the buildings.
(3) Cost of repairs.
(4) Whether property is one purchased for possession.

The fluctuations in capital value are greater than in annual value. There is also the difficulty of defining exactly, capital value, whether market value, or replacement value and whether any potential value should be included.

Local Income Tax System

This is a kind of reversion to some of the ancient systems of collecting rates on the basis of the occupier's ability to pay. Some have claimed this as the ideal system of assessing rates, but there are many defects.

(1) The difficulty of apportioning a person's income, where he has property in more than one area.
(2) The difficulty of assessing companies and firms where incomes are only the aggregations of individual incomes.
(3) A person with a small income and a big family might have to pay nothing although he would be using the services to a greater extent than his neighbours, who would have to pay for him. There is also the difficulty of ascertaining a person's real ability to pay.

Taking it all in all, I think the fairest and most equitable system is the one based on net annual value. It will be argued that this system is a tax on improvements but this is met to some extent, in the case of residential additions of non-grant houses, by remission for 5 years of two-thirds of the valuation due to such improvement. Where houses are reconstructed under a Reconstruction Grant the valuation due to such Reconstruction is deferred for 7 years.

Any system, no matter what, is bound to injure somebody. In the publication *Rating and Income Tax* the story is told apropos the abolition of torture in English prisons in the eighteenth century, a deputation of makers of instruments of torture waited on the British Government of the day with a solemn plea that torture should not be abolished, because its abolition would throw them all out of work and bring suffering and want upon their families!

CONCLUSION

I hope in this short lecture I have given you some slight idea of the working of the Valuation Acts. It is, I am afraid, very scrappy but a lot of ground had to be covered and the time was rather short. A valuer's life is a difficult one and not made any easier by unfair and ill-informed criticism. He does his job as best he can and the majority are well trained for the purpose. Without them it would be almost impossible for our local services to be carried on. If the valuations may seem to you at times excessive the fault lies with the Act and not with the valuer. Our present valuations are not up to date and there are plenty of anomalies which only a general revaluation of the whole country could rectify.

The Administration of Customs and Excise

By A. J. DONNELLY
REVENUE COMMISSIONER (RETIRED)

The administration of Customs and Excise covers a very wide field. Its chief concern is, of course, the collection of revenue, but it has other important functions in relation to prohibitions imposed on the importation or exportation of various classes of goods on grounds of industrial or agricultural protection, public health, public morals, public policy or international obligations. There are many other responsibilities of minor importance.

Duties of Customs and Excise provide for the Exchequer of a country the bulk of its indirect taxation. In modern usage, Customs duties are those payable in respect of goods imported or exported. Excise duties are payable in respect of (*a*) goods manufactured or produced within a country, or (*b*) in respect of a course of conduct, such as a licence to carry on a particular trade, or (*c*) in respect of a particular action such as a bet or attendance at an entertainment.

At the Restoration two important Acts laid the foundation of the modern system. They were

14 & 15 Car. II, c. 9.—An Act for settling the subsidy of Poundage and granting a subsidy of Tunnage—known as the Customs Act.

14 & 15 Car. II, c. 8.—An Act for the settling of the Excise or New Impost.

It should be explained here that while the latter Act imposed duties on beer and strong waters distilled within the realm, it prescribed *Customs* duties on a wide variety of goods in addition to duties imposed by the Customs Act. The Customs Act is the more important. It established

a general tariff on imports and exports, and for levying poundage (our modern *ad valorem*) it provided a book of rates fixing the value per quantity or weight of a wide variety of goods. It further provided definite rules of procedure governing the payment of duty which still remain as the basis of Customs administration. Power was taken in each Act for the appointment of Commissioners and five such Commissioners were appointed for Ireland in 1662, to deal with both Customs and Excise duties.

In the century that followed amendment succeeded amendment until hopeless confusion arose. In 1787 the younger Pitt passed a Customs Consolidation Act to simplify matters, but the relief was only temporary. Successive attempts were made to remedy the position but it was not until 1853 that effect was given to a Consolidation Act which revised and simplified the entire Customs Code. This was repealed and modernised by the Customs Consolidation Act, 1876, which, as adapted by our Adaptation of Enactments Act, 1922, forms the basis of Customs law and procedure in this State.

In 1671 Customs dues in England were taken out of farm and their collection vested in a Board of Commissioners. Similar steps were taken in Ireland in 1682. In 1789, Custom and Excise here were divided and Commissioners for each sat and acted as separate bodies. This lasted until 1830 when the three Customs Boards of England, Scotland and Ireland were amalgamated into a single Board sitting in the Customs House in London. Under our dispensation duties of Customs and Excise are entrusted to the care and management of the Revenue Commissioners. The operative instrument is the Revenue Commissioners Order, 1923, and our sovereign control over matters of Customs and Excise became effective as from 31st March of that year.

We will now turn to the fundamentals of Customs Law. The Customs Consolidation Act, 1876, provides the law relating to—

(*a*) the appointment of ports, quays and sufferance wharves for the landing and shipping of goods,

bonded warehouses for the deposit of dutiable goods without payment of duty, and boarding stations at which ships are required to bring to for Customs purposes. (Incidentally, the first appointment of Irish ports was by a proclamation of the Lord Lieutenant in Council dated 19th September 1662, pursuant to the Act of Tunnage and Poundage and the Act of Excise or New Impost.)

(*b*) the collection and management of duties of Custom with detailed provisions for ensuring Customs control, such as report of cargo by the master of a ship on arrival, entry of goods and payment of duty by the importer, and the conditions governing unshipping, landing, examination, clearance, and, if resorted to, warehousing ;

(*c*) regulations for the exportation of goods and clearance of ships outward—the requirements with regard to entry and clearance of goods, the payment of drawback (i.e. repayment of duty) on exported goods and the shipment of stores ;

(*d*) import and export prohibitions ;

(*e*) coastwise traffic ;

(*f*) bonds and securities for the due performance of Customs obligations ;

(*g*) offences and penalties.

The Act has been adapted to meet the requirements of a land frontier by the Adaptation of Enactments Act, 1922, and regulations made thereunder entitled the Customs (Land Frontier) Regulations. Various other necessary adaptations were made by the Customs and Excise (Adaptation of Enactments) Order, 1924. The Air Navigation (General) Regulations, 1947, made under the Air Navigation and Transport Act, 1946, make the adaptations necessary to apply the Customs Acts to Air Transport, and further power in this regard was taken in Section 9 of the Finance Act, 1950, with special reference to procedure as to air transport agreed at an International Convention in Chicago, 1947.

It should be noted that the Act of 1876 does not prescribe any individual duty of Customs. These normally take effect by Resolution of Dáil Éireann, to which statutory effect is given by the Provisional Collection of Taxes Act, 1927—the resolution being thereafter embodied in a Finance Act. The Emergency Imposition of Duties Act, 1932, gives power to impose duties by Order of the Government, parliamentary control being safeguarded by the necessity for confirmation by Act of the Oireachtas within eight months. This is a favourite instrument for the imposition of protective duties, as the necessary legal power can be provided at short notice.

CUSTOMS DUTIES

In this State, Customs duties relate solely to imported goods—there are now none on exports. They are of two kinds; specific (so much per weight or quantity) and *ad valorem*. Well over three hundred in number, a complete list will be found in the Customs and Excise Tariff, published by the Stationery Office. Reference might also be made to the Official Import and Export List. This is a separate volume providing, under statute, the descriptions and quantities by which goods are to be shown for purposes of importation and exportation. Examples of duties are :—

Specific Duties	*Full* £	*s.*	*d.*	*Preferential* *s.*	*d.*
(1) Wine, other than sparkling wine not exceeding 25° of proof spirit the gallon		6	0	3	7½
Exceeding 25° but not exceeding 30° of proof spirit — the gallon		10	0	6	0
Exceeding 30° but not exceeding 42° of proof spirit — the gallon	1	4	0	16	0

with a similar table at higher rates in respect of sparkling wine. There are higher rates in respect of

a content of proof spirit exceeding 42° and additional charges for certain wines imported in bottle. (" Proof spirits " is defined by the Spirits Act, 1818, as spirits which at a temperature of 51° F. weigh exactly $\frac{12}{13}$ths of an equal volume of distilled water. It is a mixture of alcohol and water in the proportion of roughly 59 : 47 by volume.)

(2) Roofing Slates—the cwt. 5/–. There is no preferential rate.

AD VALOREM DUTIES

(3) *Clothing.* This heading comprises 16 classes of garments, liable variously at 75%, 37½%, 25% and 10% *ad valorem*, with preferential rates in the case of new articles.

(4) *Roofing tiles* comprising ridge tiles, hip tiles and other roofing tiles made wholly or partly of clay or of Roman cement, Portland cement, or any other hydraulic cement—50% *ad valorem.*

The definition of value is important. It is the price which the importer would pay for the goods if delivered, freight and insurance paid, in bond at the place of importation (Finance Act, 1938, Sec. 25). This definition has since been extended by Sec. 15 and Schedule 3 to the Finance Act, 1952. The basic principle remains the same. This means in effect the " all-in " price which the average importer of a similar type, financially independent of the seller, would pay for the goods at the ship's side before Customs duty is levied. The price will vary according to the type of importer, i.e. private buyer, retailer or wholesaler. I have said " financially independent of the seller." When a firm abroad consigns goods to a branch or to an associated firm (" house to house ") here the invoice may, in the ordinary course of commercial practice, indicate a specially reduced price. In such cases it is necessary to fix a value equivalent to that which an independent purchaser here would pay, as it is on that value and not on the figure shewn on the invoice that duty must legally be assessed.

A distinction should be drawn between "revenue" duties, i.e. duties imposed solely to bring money into the coffers of the State and duties imposed to protect home manufacturing interests. From the time when, in 1846, Britain adopted the principle of Free Trade, the bases of financial policy in regard to such impositions were mainly two—to simplify and cheapen the collection of revenue by reducing the number of commodities on which duties were levied and to encourage manufacture by exempting raw materials. After the South African war, considerable propaganda arose in favour of protection by tariffs against the foreigner, but it was not until the war of 1914–18 that these principles were to any degree conceded. In 1915, *ad valorem* duties were imposed on motor cars, musical instruments, clocks and watches and cinematograph films. These duties, although primarily imposed for the purpose of obtaining revenue, had, in fact, a very considerable protective effect. At the time this was, in another respect, a novel step, inasmuch as although *ad valorem* duties had at one time figured in the Customs Tariff, they had disappeared since 1860. Our native government was not long in extending this safeguard to home industry. Duties on candles, boots, bottles and soap appeared in the Finance Act, 1924, to be followed, in 1925, by duties on clothing and furniture. A minimum charge of 2/6 Customs duty proved most effective in retaining at home a large proportion of the shopping by post trade. In 1932, the Government embarked on a policy of intensive protection, about 90 new duties being given statutory effect in that year. This policy has continued without a break, so that the tariff of 1922 with its twenty-five heads has expanded to the present formidable list of well over three hundred. Many of these heads are highly complex—thus the duty on clothing provides no less than 265 separate categories of articles for the Import List.

Preferential Rates

Reference should be made to preferential rates. The Finance Act, 1919, provided for preferential rates of duty

on certain goods (*a*) consigned from *and* (*b*) grown, produced or manufactured in what is now the British Commonwealth of Nations. This provision has been adopted in many of our duties, and the Finance (Agreement with United Kingdom) Act, 1938, provided similar rates for certain goods produced or manufactured in the United Kingdom or Canada. To secure the benefit of the reduced rates it must, in the case of manufactured goods, be shown that a certain percentage of this value, usually 25%, is due to labour done or materials produced within the favoured country.

Passing Through Customs

What happens when a ship arrives, say, in Dublin Port? There is a hailing station near the 100 ton crane where the preventive staff are on duty night and day. The ship is hailed—"Where are you from?" If from a foreign port, then the question is put, "Are you all well on board? Any deaths or sickness during the voyage?" If the answer is satisfactory she is allowed to proceed to her proper berth—this is called giving verbal pratique, pratique being an old French word meaning licence to trade after quarantine. If the answer is not satisfactory (and in that case an appropriate signal may already have been flown as being an "infected" or "suspected" ship) the vessel will proceed to a special place in the port, for the attention of the Port Medical Officer. All being well, however, she arrives at her place of discharging or of loading (if arriving in ballast). A Preventive Officer then boards her and puts certain questions connected with Public Health Regulations: If he is satisfied he gives a certificate of pratique and the vessel is said to be free to proceed. He then demands a list of dutiable stores in possession of the ship's crew. Certain quantities of consumable goods are allowed to be left out for use in port—the rest is put under Revenue Seal. The same procedure applies to the ship's stores. The officer will enquire as to firearms or as to any live animals on board, e.g. cats and dogs may not be landed and parrots are tabu because of psittacosis (a parrot disease deadly to

human beings). There are agricultural prohibitions in the case of certain live animals carried for use as food. As soon as may be the vessel is rummaged for possible contraband—a very expert business calling for familiarity with every part of the ship's structure. While in port the vessel is under a 24-hour watch and is visited several times when discharging.

These formalities completed, the master, within 24 hours of arrival must, under penalty, lodge at the Custom House a document known as the ship's report, accompanied by the certificate of pratique. This report contains particulars concerning the ship, the voyage, the crew, the ship's stores and the cargo—where laden, marks and numbers, descriptions of goods, consignee. This report does not clear the goods through the Customs—such clearance is done by documents known as entries which are passed by the importer or his agent. Normally goods will be entered for home use (delivery into immediate consumption) or for warehousing. In the case of entry for home use, the importer presents the appropriate form at the Custom House declaring the goods as free of duty, or liable to such or such a specific or *ad valorem* duty, as the case may be. If dutiable he pays down the duty at the same time. This entry, signed by the Customs Officer, becomes a warrant for the landing and delivery of the goods; it is transmitted to the landing station beside the ship (technically, a transit shed) where the importer must produce the goods for examination, opening such packages as desired. If all is well the landing officer then allows the goods to be cleared from Customs custody. It will easily be seen that the wide variety of goods liable to duty, textiles, mechanical or electrical goods and the like call for exceptional alertness and acumen in the officer's examination. He must be satisfied not merely that the goods correspond to the entered description but that they are not liable under some other head and he must be satisfied also as to their quantity or, what is much more difficult, as to their value, lest any fraudulent under-declaration should escape notice.

It should be emphasised that decisions as to whether particular articles are liable to duty, and if so, under what heads, form a major daily problem. These decisions may well be, and very often are of vital importance to an industry or to traders in a particular commodity. All cases of importance are, of course, referred to the Board for judgment. There is power to appeal, but it has never been availed of, which would seem to indicate that importers have, in general, been satisfied that justice was done. In the U.S.A. decisions of this nature are held to be of such importance that an importer, dissatisfied with the ruling of the local Collector of Customs, can lay his case before a special Customs Court of five judges, from which, in turn, appeal lies to the U.S. Court of Customs and Patent Appeals, with a presiding judge and four associate judges.

Here also it may be remarked that the Customs are *not* clearance agents. It is for the importer to see after his goods on arrival—for the importer to make entry—for the importer to produce the goods for examination, to open any packages as required by the officer and to close the packages again. "Delays in the Customs" are nearly always attributable to dilatoriness of the importer or his agent in one or more of these respects.

It may be observed that the report and the entry provide a valuable check on importation since they are prepared from independent data. The particulars on the report are obtained from the shippers and appear on Bills of Lading. Those on the entry are obtained from the invoices or advices supplied by the senders of the goods. The Transit Shed to which reference has been made is the premises into which goods are discharged from the ship. It is within the Customs perimeter and the goods may be left there for a short period pending presentation of the entry by the importer. Any goods lying unentered in such shed after the lapse of time allowed for entry would be removed to one of the State warehouses provided for the reception of such goods as well as seizures and abandoned goods.

Ship Leaving

What happens when a ship departs? Before any goods are loaded the master must produce a certificate that the ship was duly cleared inwards, together with an entry outwards. Normally, except in the case of goods exported from warehouse or on drawback it is sufficient for the exporter to lodge with the appropriate Collector within six days of the clearance of the ship a form known as a specification, giving marks, numbers, description of goods, weights or quantities, value, destination, consignor, consignee. At the outbreak of the last war, the Commissioners under their statutory powers, made an order requiring pre-entry of all goods, so that specifications must now be lodged and the officer's clearance obtained before exportation. This, of course, was a measure for strict control of exports, as to which emergency conditions were necessarily attended with prohibitions on a wide range of articles. For goods exported on drawback or from bond (whether as merchandise or for use as ship's stores) a special procedure is required. Drawback is the repayment of duty in special cases. Thus drawback of Excise duty is payable on duty paid home-made beer exported and drawback of Customs duty is payable in respect of home-manufactured tobacco made from duty-paid imported leaf. As to exportation from bond, a good example is the case of whiskey which has been removed from the distillery to a bonded warehouse without payment of duty and is thereafter exported. It will be appreciated that in these cases rigid control and careful Revenue safeguards are applicable throughout. The pre-entry order has as a necessary consequence entailed a more rigid examination of exported goods and Exchange Control has for some time called for a careful examination of values declared in the case of goods exported to non-sterling areas.

The goods being loaded the master lodges a form known as Declaration and Stores Content and a Victualling Bill (a detailed list of bonded and drawback stores shipped) and a clearance label. These are all affixed and when the clearance label is completed and signed by the proper

officer, it is the authority for the departure of the ship. Other formalities include evidence that Light dues have been paid and loadline requirements complied with. It may also be necessary for safety reasons to survey the deck cargo, if any, carried.

No special reference has been made to the Land Frontier, but the duties of the importer and exporter and the formalities he encounters are basically the same. There is a chain of Customs Stations near the frontier, and to each there is allotted a Frontier Post—really an outpost where minor matters can be transacted. Normal commercial traffic is restricted to approved roads and approved hours. Merchandise must as a rule be dealt with at the Station and special regulations facilitate passenger motor traffic. Smuggling is a constant problem and the frontier is watched day and night, by foot and motor patrols. The magnitude of this problem can be gauged by the fact that in 1948, 20,546 seizures of smuggled goods were made. The number of persons convicted in Court proceedings was 412 and penalties amounting to £5,249 were recovered. The institution of proceedings, the mitigation, in appropriate cases, of penalties or terms of imprisonment, and the disposal of seizures are solely within the discretion of the Commissioners. The work is heavy and unremitting.

Bonded Warehouses

Particular mention should be made of the importance of the warehousing system. Dutiable goods entered to be warehoused may be stored only in warehouses approved by the Revenue Commissioners at warehousing ports approved by the Department of Finance. These warehouses are provided by private enterprise but are under Revenue control and particular regard is had to such matters as structural security, means of access and locks. Bond is required for security of the duty while in warehouse and duty is payable on goods delivered for home consumption therefrom. The system has the following advantages :—

(1) The trader does not pay duty until he needs the

goods. He can accordingly buy as he sees fit and by storing in bond defer payment of duty until there are favourable selling markets. He thus reduces the amount of business capital needed. Further, should an advantageous export market offer, he can avail of the chance and export his goods without paying duty. All this tends to even out fluctuations between production and consumption;

(2) Selling is assisted by regulations which permit trade samples to be drawn and allow the removal of goods from one warehouse to another more favourably situated for their disposal;

(3) Some goods lose in quantity or quality during storage, e.g. spirits lose by evaporation. If a specific duty applies natural waste during storage is written off and there is no monetary loss;

(4) Goods can be prepared in bond for special markets without loss of duty on any waste in the operations involved;

(5) Small traders, duty being deferred, can carry larger stocks.

Other Duties of Customs Officers

Nothing has been said of the vast quantity of duty free licences or of licences for goods subject to quota restrictions, which complicate the day-to-day work of the Customs Officer. He has the duty of enforcing import and export prohibitions, and it should be borne in mind that in this enforcement he is, for the most part, the agent of other Departments with whom responsibility for the prohibition lies. Revenue prohibitions, as such, are relatively few. As to imports, the Acts relating to Diseases of Animals, Destructive Insects and Pests, Food and Drugs, Public Health, Dangerous Drugs, Therapeutic Substances, Explosives, Firearms and Censorship of Publications (and many others) all cast on him a heavy responsibility in this regard, and work in connection with export prohibitions is no less heavy. He may have activities in other directions

—as a Registrar of Shipping he performs legal functions in regard to first registry and transfers of registry of ships and the Register kept by him is conclusive evidence of title. As Receiver of Wreck he looks after wreck (goods cast ashore) and salvage—indeed, during the late war, this harvest of the sea was of prime importance in regard to rubber and timber and a close and anxious watch was constantly kept to ensure that such goods reached the proper hands. Detection of false trade marks or false trade descriptions falls to him under the Merchandise Marks Acts and he has also an active interest in matters relating to assay and copyright. These by no means exhaust the list, but enough has been said to indicate the catholicity of interests with which the Officer of Customs must concern himself.

A final word as to Statistics. Statistics of goods imported and exported are compiled from various forms (e.g. entries and specifications) presented by importers and exporters to Officers of Customs and Excise, copies of which are sent to the Central Office of Statistics. In the case of dutiable imports, the returns are prepared by the Accountant General of Revenue and transmitted to the Central Office.

EXCISE

By the Act 12 Car. 2, c. 23, certain impositions (known as "Rates of Excise") were granted for the term of the sovereign's life upon spirits, beer, cider, perry and mead made in England, on liquor of tea, coffee and cocoa made for sale, and on imported spirits, beer, cider and perry. This Act, which had been renewed from time to time at the commencement of each reign, lapsed in 1830 and was not continued. New duties of excise were then, and have at different times, been imposed on a variety of articles and on certain licences to trade in or sell certain commodities, or to enjoy certain amenities. The Act 12, Car. 2, c. 24, imposed permanent duties on goods of the same description and at the same rates as the temporary Rates of Excise. These duties were known as the "Hereditary Excise"

and formed part of the hereditary revenues of the Crown. They were suspended from time to time and in lieu thereof an annual sum was granted to the sovereign for life. Finally they were abolished.

Excise duties on imported goods ceased in 1825 and are applicable only in one well-defined case. This arises when a *Customs* duty is imposed on a commodity of which large stocks are held in the country, and when it would be inequitable that holders of such stocks should escape the charge of duty to which importers are subject. In such cases, provision may be made that duty of excise is to be levied on such stocks. An example may be found in Sec. 15 of the Finance Act, 1932. This Act imposed a Customs duty on tea, and Sec. 15 of the Act imposed a corresponding duty of Excise on all tea in stock over the first 500 lb. thereof. Such cases are, however, rare, and generally it may be said that duties of Excise are duties (*a*) charged on certain goods manufactured in this country (*b*) on trading and other licences taken out in certain circumstances, and (*c*) on the exercise of certain private activities (betting and entertainments).

The number of excise duties on commodities is necessarily few. In this respect, excise and customs differ—in the former we have manufacturers widely distributed within the country, whilst, as importers are necessarily concentrated at certain points of entry, a multiplicity of Customs duties does not present a comparable difficulty. A large number of excise duties would be an intolerable burden on industry and would require a very considerable staff of officials. For economy in administration it is desirable that liability should arise at a stage of production where large quantities are concentrated and where the article taxed is clearly distinguished. Accordingly, industries with large-scale producing units are better subjects for excise taxation than those in which the commodity is produced by numerous small manufacturing plants. In the latter case, the costs of collection might prove uneconomical. Consequently, we find the main duties of excise imposed on such articles as Beer, Matches, Hydrocarbon Oil, Spirits, Tobacco and Tyres.

Licences

Duties upon licences to be taken out by the makers of and dealers in certain commodities date back at least to the time of Queen Anne. At the request of the principal traders concerned and on the suggestion of the Commissioners of Excise, a general system of licences was established in 1784 by the creation of annual licences, with a yearly duty on each, which were required to be taken out by defined manufacturers, including brewers, distillers, maltsters, spirit dealers and vinegar makers. Brewers, distillers and maltsters were charged by a scale which varied with their yearly output, the other traders paying a fixed annual charge. A third method was introduced in 1787, when the fixed duty on a publican's licence was changed to a scale which varied with the annual value of the licensed premises. Excise licences are now divided into two classes.

Class A. *Liquor Licences.*

Manufacturers (Brewers, Cider Manufacturers, Distillers, Rectifiers, Sweet Makers).
Dealers in Spirits, Beer, Wines, Spirits of Wine.
Retailers of Spirits (Publicans : Off-Licences).
Retailers of Beer, Cider and Perry.
Retailers of Wines.
Passenger Vessels and Railway Restaurant Cars.
Occasional Licences.

Class B. *Licences other than Liquor Licences.*

These include Auctioneers, Bookmakers, Dog Licences, Game Dealers, Moneylenders, Pawnbrokers, Plate Dealers, Hawkers, Hydrocarbon Oil Refiners, Table Water Manufacturers, Sugar Manufacturers, Tobacco Curers, Growers, Manufacturers, Dealers and others.

Other Excise Duties

There is a third class of Excise duties. In 1802 duties had been levied under various heads including armorial bearings, carriages and male servants. These were known

as Assessed Taxes because in most cases the amount of duty payable was assessed on a progressive scale according to the number of articles or servants kept. Most of the duties lapsed, but in 1869 the particular duties named were converted into Excise licence duties known as Establishment Licence Duties. In this connection, Anson, *Law and Custom of the Constitution*, Vol. II, remarks: "They are in fact demands made by the State upon the citizen to pay for enjoyment of certain things of convenience or luxury, on the assumption that such enjoyment represents wealth which should thus be called upon indirectly to contribute to public needs." The duties on armorial bearings, etc., did not apply in this country, but the principle enunciated by Anson finds its place in our Excise tariff with relation to the duties on Betting and Entertainments.

EXCISE ADMINISTRATION

The Acts which contain the general provisions relating to the collection and management of the Excise are known as the Excise Management Acts, 1827, 1834, and 1841. The procedure in relation to the collection and safeguarding of the various duties is as a rule prescribed *ad hoc* in enactments relating specifically to those duties. Administration of Excise was entrusted to a centralised Board almost from the time at which these duties were first levied. In 1670 a Board was appointed by Letters Patent to be Commissioners for the collection of Excise in the then United Kingdom. This was amalgamated in 1848 with the Commissioners of Stamps and Taxes as the Commissioners of Inland Revenue, but in 1909 the care and management of duties of Excise was transferred to the Commissioners of Customs (thereafter known as Commissioners of Customs and Excise) by the Excise Transfer Order, 1909, made under the authority of the Inland Revenue Regulations Act, 1890. In this country the powers of Commissioners of Customs and Excise and of Commissioners of Inland Revenue are exercised by the Revenue Commissioners.

The observations already made in regard to the deposit in bonded warehouses of goods liable to Customs duty

apply to goods liable to Excise duty. Both classes of goods may, generally speaking, be retained in such warehouses without payment of duty until delivery is required for home use or for exportation. The Customs warehousing system began in 1700, the Excise in 1762.

For the purpose of Excise control it is necessary to safeguard not merely the finished article but also to control the process of manufacture. Before a manufacturer's licence is granted the manufacturer must, in writing, describe the premises, the processes of manufacture and the plant. In such cases as brewing and distilling the premises are under continual supervision, in which revenue locks and seals play their part and, even with this, prior notice must be given before commencing such operations as brewing or the like.

The whole question of Excise administration is technical in the highest degree. In the case of beer, spirits and tobacco in particular, statutory controls of the most minute and far-reaching description are provided at every stage where the least danger to the Revenue might be apprehended. For that reason I have only been able to refer to Excise in broad outline, but I may say that the standard legal text-book (Highmore's *Excise Laws*) comprises two volumes aggregating 1,500 pages. I might, however, say a word about familiar duties which the citizen encounters in the form of practically direct taxation.

Entertainments Duty was introduced in 1916 by the Finance (New Duties) Act, 1916, and applied to all entertainments to which the public were admitted as spectators. There were some minor exemptions in favour of entertainments promoted for charitable or educational purposes. In course of time a formidable table of exemptions developed. A notable exemption was that granted in 1931 for dramatic performances and concerts. In the following year the duty was extended to dancing, thus placing the duty for the first time on participants in amusements, as distinct from spectators. In 1949, relief was granted for all entertainments held in outlying rural areas. The gradual extension of the table of exemptions now leaves the position

that the yield of Entertainments Duty is at present almost entirely derived from cinemas, dances and greyhound racing.

The introduction of Betting Duty in 1926 was a corollary of the Betting Act, 1926, which effected a minor social revolution in bringing into being the now familiar betting shop. The man in the street had no longer to place his bets surreptitiously with the street-corner bookmaker and the Revenue were enabled to avail of this change to levy from the punter a contribution to the Exchequer. Some changes were effected in ensuing years, but the present position is that both cash and credit betting laid off the course suffers a revenue tax of 7½%, whilst bets laid on racecourses with bookmakers or through the medium of the totalisator contribute to the upkeep of racing under arrangements controlled by the Racing Board.

In some cases Revenue control does not cease even when Excise duty has been paid. This control is principally directed to prevent the adulteration of excisable commodities sold to the public, whereby part of the consumption would escape the tax. The Foods and Drugs Acts protect the interests of the public, where the adulterants are definitely injurious, but the Revenue authorities indirectly assist by intervening to ensure that the Exchequer receives its full quota of duty. Thus the admixture of tobacco with the dried leaves of other plants would prejudice the revenue, and the use of adulterants to give body to low gravity beer would also be a case where the revenue would suffer loss. There are several legal provisions to circumvent adulteration and, in general, beyond repacking or similar operations, it is usual to prohibit any interference with the product after manufacture is complete and Excise duty assessed.

What do we get for all this? The Finance Accounts for the financial year ended 31st March 1950, show the total net receipts of Revenue as £74,500,000. Of this, Customs contribute £25.107,000 and Excise £12,638,000—say, half the total. These are approximate figures. As regards Customs, the chief benefactor is tobacco—over £16,000,000,

followed by petrol, £3,200,000; spirits, £1,100,000; motor cars and parts, £924,000, and clothing, £877,000. The four pillars of Excise are spirits, £5,000,000; beer, £4,800,000; entertainments, £1,200,000, and betting, £630,000—again approximate figures. No argument is needed to claim that this is a return more than satisfactory for the work involved.

Extracts from "The Application of Statistical Methods to Administrative Problems." Read 5th February, 1952, by R. C. Geary, Director, Central Statistics Office.

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The Establishment of the Central Statistics Office

As to the functions and objects of the Central Statistics Office, I cannot perhaps do better than quote from the Government announcement when the Office was set up in 1949.

"In order to meet the need to co-ordinate and improve official statistics, the Government have decided to set up a Central Statistics Office. This Office will be attached to the Department of the Taoiseach and will take over, as from 1st June 1949, the work and staff of the present Statistics Branch of the Department of Industry and Commerce. To give effect to the decision, the Government have made an Order transferring to the Taoiseach, as from that date, the functions of the Minister for Industry and Commerce under the Statistics Act, 1926, and the Statistics (Amendment) Act, 1946.

". . . To meet the needs of domestic policy and international economic co-operation, an expansion and improvement of the existing service is necessary, particularly in the field of national income, expenditure, savings, capital-formation and associated subjects. The new Office will be responsible for the compilation of such data. It will also, as soon as practicable, assume responsibility for the compilation of statistics of births, marriages and deaths (now compiled in the General Register Office, Department of Health), and it will be charged with the surveillance of all government statistics, whether the Office is primarily responsible for their compilation or not.

"To give advice on statistical matters, a Statistical Council will be set up under the Statistics Act, 1926. In addition an Inter-departmental Committee will be appointed to co-ordinate the statistical work of administrative Departments. . . ."

I would like to comment on a few points in the announcement. When the former Taoiseach, Mr. Costello, announced in the Dáil the institution of the Office, Mr. de Valera, then head of the Opposition, stated that the proposal had his full support and both Mr. Costello and Mr. de Valera, after his recent assumption of government, have particularly stressed the independence of the Office of any kind of political or departmental control. It was to emphasise this essential feature of the

new establishment that the Office was formally assigned to the Department of the Taoiseach. This desideratum of independence has been honoured by successive administrations in the spirit and in the letter.

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THE ROLE OF THE STATISTICIAN

It is recognised that if public administration is to be scientific it must be based on statistics. It is no exaggeration to say that any kind of administration would now be impossible without statistics. The attitude of the administrator is no longer, "I *know* so-and-so : give me statistics to prove it." Knowledge that a state of affairs exists is not enough : the administrator must have the measure of it, if it is measurable. The statistics-consciousness of the public and of its representatives has expanded considerably in Ireland as in other countries during recent years, as the political controversies of the past two years, in comparison with those of a quarter-century ago, will clearly demonstrate. Though not always explicitly stated, these controversies have nearly always a statistical basis : it will suffice to instance such matters as emigration, the cost of living, public health, unemployment, rural depopulation, housing, juvenile delinquency, the growth of industry—the number is really legion ; public concern about these matters is reflected in administration.

It is very understandable that, even on the part of the intelligent public, there should be a considerable measure of distrust of statistics, e.g. as expressed in the saying " you can prove anything by statistics." If I were to evolve a popular dictum I would prefer to phrase it " you can *disprove* anything by statistics," for it is a very important role of statistics to dispel many popular misconceptions, to act as a corrective for the propensity of people to generalise from particular instances. If a person hears of two cases of man biting dog, he may be excused—unless he is protected by statistics—for assuming that in his neighbourhood this form of cruelty to animals is a universal practice. Events which make an impression on the popular mind are inevitably the exceptional cases. I regret that I have no statistics to prove the contention, but I surmise that the number of cases of man biting dog are fewer than those of dog biting man, in turn far fewer than the number of cases in which no biting at all occurred. A very important role of official statistics is to steady public opinion, to reflect in figures the

great degree of stability in human behaviour, for people want to behave to-day as they behaved yesterday and it requires great national or political happenings to deflect them from their course. Statistics are always changing, of course, but not so much as the non-statistically-minded, unfortified by statistics, think.

Dare I say that the public's mistrust of statistics derives from a certain lack of humility on their part? The typical well-informed intelligent member of the public will listen with a deference and respect to his doctor or his lawyer or his architect which he will not accord to the statistician, for every man thinks he can be his own statistician. Not being a statistical expert, why should he not be confused by the clamour of rival interests, each propounding statistics and trains of argument based on these statistics, to try to prove his case? The modern official statistics office produces literally millions of figures every year from which the astute members of the special interests or the pressure groups can make a selection favourable to their theses: it is to expect too much of human nature to think that their analyses should be quite objective. The trained statistician will have no difficulty in assessing the strength or weakness of the case made, either by checking the figures submitted and the arguments based on them, or by producing other statistics which may sustain or defeat the case originally made. To make or break a case based on statistics it is not enough to be "good at arithmetic." The trained statistician has at his disposal a full knowledge of the relevant statistics and of the technical methods to be used to draw inferences from them, which methods may range from simple arithmetic to many branches of advanced mathematics. The statistician is not omniscient, however. He does not pretend to know, as a statistician, what "right action" should be taken, since such action depends on the ends to be attained. Even if these ends are designed for "the greatest good of the greatest number" they will not please everyone. What the statistician and his colleague the economist may hope to do is to indicate, in the light of the statistics, what the probable results of the action will be. In Ireland, as everywhere else, there is an increasing recognition of the necessity for each big special interest to appoint its own statistician, so that when a case is made, or where a case is to be answered, it will be technically sound. It is right and proper in a democracy that there should be a conflict of interests, i.e. a conflict in the ends

to be attained. There is no reason, however, why there should not be agreement on the basic facts, statistical and other, though different groups may tend to favour some facts in preference to others as being related to the ends in view. The great importance of having statisticians and economists to marshal the commonly agreed facts lies in the narrowing of the margin of conflict and of bringing agreement nearer. I am reminded in this connection of a recent episode in an advanced country. The statistician of an Employers' Group telephoned his colleague of a Workers' Group about a figure which the latter had submitted at a conference the same morning, asking if he could see the details of the calculation upon which the figure was based. This request was readily granted and, the figure standing up to this expert scrutiny, the employers granted the workers' case.

This brings me to an essential point. Current statistics derive most of their importance from the fact that they are implicitly forecasts. When the moving finger, having written, passes on, there is nothing much to be done about it, except perhaps to clean up the mess, and this is also a matter for action in the future. When one asks for the latest figures for, say, imports, in general or in particular, the administrator or the businessman is going to base action on what is likely to happen to these figures in the near future. He says that the figure will be so-and-so (or, more conservatively, that the figure will probably lie within certain limits) and will base his action on such an inference : such action may, of course, be designed to influence the trend which would otherwise be recorded. It is because current statistics are implicitly forecasts that it is so important to produce the statistics as soon as possible after the end of the period to which they relate. As far as compilation is concerned, by international standards most classes of Irish statistics are now satisfactory in this regard ; but international standards are always improving and we are not complacent about our few laggards. A major difficulty is the printing situation. Irish printing firms are apparently so overwhelmed with work that they find it impossible to produce major statistical reports in time for them to be useful ; when the reports now with the printers appear they may have some value for students of economic history ; they have little or no value for administration. To try to cope with the situation the Office, in co-operation with the Stationery Office, has set up its own printing plant, using the Vari-Type system. This is less satis-

factory than printing proper but we must give the public the statistics with the least possible delay. The printing situation is the most recalcitrant with which the Office has to cope because its solution is not in our control. At a later stage I shall have more to say on forecasting on certain assumptions with a view to policy-making.

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COLLECTION OF STATISTICS

Mention of the Statistics Acts, 1926, and 1946, prompts the remark that while the Office may, after consultation with the appropriate Departments, by Order signed by the Taoiseach, take mandatory powers to collect statistics on every aspect o the national life, compelling all persons to whom schedulec forms are duly dispatched to furnish the specified particulars in practice a large part of official statistics are compiled from returns voluntarily rendered by the public. No praise woulc be too extravagant for the public-spirited manner in which farmers, businessmen and members of the general public co operate with the Office in this regard. Recourse is had tc mandatory powers only in regard to such major inquiries as the Census of Population, the Census of Industrial Productior and the Census of Distribution which has been resumed, or an annual basis, for 1951 after a lapse of eighteen years. The basic material for certain classes of statistics are collected under other enactments : the most important are external trade statistics based on returns collected by the Customs authorities under the Customs Consolidation Acts. Even when the Office is armed with statutory powers, the statistics could not be collected without a large measure of goodwill towards the work of the Office on the part of the general public. The number of cases in which it is necessary to take legal action against defaulters is negligible.

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CENSUS OF POPULATION

A *Census of Population* was taken in 1951 after an interval of five years since the previous Census, the normal interval being ten years. On account of the shortness of the latest interval the scope of the inquiry was limited to bare essentials, so that the full results of the inquiry will be available within two

years of Census date. The compilation is ahead of this time schedule, which is a rigorous one for this inquiry. The preliminary results, which were published two months from Census date, fully justified the inquiry in showing an unexpectedly large volume of emigration during the past five years, and the accelerated rates of decline of population in rural areas and of increase in the population of Dublin City and County. These are matters of grave public concern, obviously of special importance for the Commission on Emigration and Other Population Problems now considering its Report, on which presumably administrative action will be taken in due course.

As regards the usefulness of the Census of Population in administration it is nearly enough to say that this inquiry is of almost as venerable antiquity as government itself, and its importance grows. All departments use the Census for a great variety of purposes. It is specifically written into a number of Acts of Parliament, such as the Electoral Acts, the Licensing Acts, the Unemployment Assistance Acts and the Finance Act of 1949 (in connection with the taxation of cinemas in rural areas). Apart from these statutory uses, the Department of Education uses the Census classification of ages of school children for forecasting numbers of school children, the Revenue Commissioners for forecasting budgetary provision for Old Age Pensions, etc., the Department of Health for the compilation of age specific death rates per 100,000 population for different causes of death, infant mortality rates in different areas, etc. The Central Statistics Office itself uses the Census for a great variety of purposes. The life tables, so important for life assurance purposes, are computed from Census and mortality statistics both classified by age groups.

As a last example of the usefulness of Census statistics in administration the actuarial planning and costing of the Children's Allowances scheme was based on the Dependency Volume of the 1926 Census which showed numbers of dependent children under 16 for married men, widowers and widows classified by number of children, age group and occupations of parents or guardians. The actual costs of the scheme were found to correspond closely to estimates framed in advance. The Census is, so to speak, the back-ground against which all statistics are to be measured, as when we speak of the national income per head.

It can scarcely be regarded as a use of statistics but it may

nevertheless be mentioned that the 1951 Census was used as a Register of Population in connection with the recent new issue of ration books.

Statistics of External Trade

From the viewpoint of the Department of Industry and Commerce no statistics are more important than those of *External Trade*. Almost daily the Department is in touch with the Office for latest imports or exports of particular commodities classified by countries of origin or destination or for details of the trade with particular countries in connection with the working of trade agreements, etc. The Department of Agriculture has also a vital interest in these statistics, more especially in the exports of agricultural produce, direct from farms or processed. During the past year two major steps in advance have been made in the compilation of these statistics: (1) the Revenue Commissioners, in consultation with this Office and other interested Departments, have devised a completely revised Import and Export List of commodities which came into use on 1st January this year, and (2) the compilation of these statistics has been mechanised. The new List, from the viewpoint of the administrator, the businessman and the economist, is incomparably superior to the list which it replaced which had grown haphazard with every new or revised import duty into an unwieldy mixture of a statistical classification and a tariff list. With mechanisation it will in a few months' time be possible to produce the monthly statistics about the 20th of the month following, giving an analysis of principal imports by country of origin and principal exports by country of destination, as well as an analysis of trade by commodities for principal countries. It will be clear from what has gone before that these extensions will greatly improve the usefulness of the statistics for administrative purposes.

Other Statistics

Of only slightly lesser importance for the Department of Industry and Commerce than trade statistics are the statistics derived from the annual statutory Census and the quarterly voluntary assessments of *Industrial Production*. In the Census for 1951 the inquiry into power equipment, last made for 1936, has been resumed. Another important advance has been the extension of the statutory inquiry, in simple form, to small

(including one-man) industrial concerns, heretofore excluded from the statutory inquiry. The number of persons in small concerns is large and their output sufficiently important, to make a close estimate of it desirable.

Upwards of 50,000 forms have just been issued in connection with a statutory *Census of Distribution* which extends to pawnbrokers, hotels and restaurants, manufacturers' agents and to book-makers as well as to wholesale and retail establishments proper. This inquiry will be continued on an annual basis. While the form of inquiry is much simpler than that used for the Census of Industrial Production, the kind of information to be collected is basically the same. The principal particulars required are (*a*) nature of business, (*b*) sales, (*c*) purchases, (*d*) personnel and employee remuneration, (*e*) value of stocks, (*f*) rent and rates. There is a great demand for this kind of information in the Department of Industry and Commerce as well as from distributive trade associations, advertising and market research organisations and the like. Ireland, for 1933, was the first country in Europe to take a Census of Distribution, and we are confident of the success of the latest inquiry.

The low level and the stagnation in the aggregate volume of *Agricultural Output* has been causing grave concern to the public and to successive Ministers for Agriculture. Irish agricultural statistics of the numbers of the different classes of livestock and the acreage under different crops, going back in an unbroken sequence for 105 years, are amongst the most remarkable in the world, and their excellence is a tribute to the farmers who voluntarily furnish each year answers to a long series of questions and to the members of the Gárda Siochána who act as enumerators.

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The White Paper giving Estimates of National Income and Expenditure

The White Paper shows the national income (which may be regarded as the total income from home and abroad of persons normally resident in the country) classified into its main sectors : (1) profits, dividends, and rents, and (2) employee remuneration. Another classification shows the economic sectors in which income arises, e.g. agriculture, industry, etc.). The manner of expenditure of income is shown in such categories as personal expenditure at market prices, expenditure by public authorities,

net current exports (=net foreign investment), subsidies less indirect taxes, with net capital formation. Other tables show gross capital formation at home (i.e. expenditure on new physical capital formation and on replacements of existing capital) and the manner in which it is financed; from personal savings, business savings, government savings and withdrawals from abroad; personal expenditure at current and fixed prices in the categories, food, alcoholic beverages and tobacco, clothing, rent, fuel and light, and other goods and services. Other tables which have been prepared in an experimental way present these data for three economic sectors: (1) business enterprises, (2) general government, central and local, and (3) private householders and non-profit-making institutions. The tables show, on the familiar double entry principle, four accounts, namely (1) the production account, (2) the appropriation account, (3) the capital transactions account, and (4) the external account.

From the narrowly statistical viewpoint these accounts have the great advantage that they synthesise practically the whole economy of the nation. A study of these accounts and the great wealth of statistics which lie behind them is a liberal education in the national economy. When the official statistician has produced *direct* estimates of each of the items of all these accounts, necessarily self-balancing, he has solved a large part of his economic statistical problems. At present, in Ireland as in other countries, it has been nesessary to have recourse to residuals instead of direct estimates, e.g. for personal savings but, happily, such items are few in number. In due course these residuals will be directly estimated and, since the accounts must finally balance, a valuable check on the independent estimates of the individual items of the accounts will be forthcoming. Every economic statistic finds its place somewhere or other in these social accounts.

These accounts seem the logical outcome of the problem of government budgeting which involves the balancing of government income and loans against government expenditure. The amounts to be raised in taxation are, in turn, dependent on the amount of taxable income which is, of course, closely related to the national income. It will be possible to trace from the accounts the effect of a given taxation and subsidy policy through the whole national economy, if necessary with certain assumptions as to the level of prices, of wages, of production, etc. during the coming year. Since the accounts are self-

balancing they will reveal, in given assumptions, what a particular policy will entail in the level of national savings, capital formation and the element over which there can be least control, foreign investment or disinvestment, which equals the balance, on current account of imports over exports, visible and invisible. A Government may be able to control the value of imports but the value of exports will depend on foreign demand which at normal times is largely beyond the control of the home government.

This approach to the budgetary problem is in active operation in a number of European countries. The methods used in these countries involves the establishment of the social accounts for the latest year, e.g. 1951, with the least possible delay and writing in for each item the probable values for the following year, necessarily with assumptions as to the effects of government policy on taxation, etc., the probable volume and price level of production, imports and exports, the labour force and the level of wages, the building and social security programme, etc. Different sets of forecasts based on different assumptions are prepared for consideration by the Economic Committee of the Cabinet on which, naturally, there are rival interests. The Committee is, however, faced with the recalcitrant fact that the social accounts before them must balance and this acts as a curb on demands, which otherwise might be extravagant, of particular Ministers. Here again we see statistics in their role of bringing agreement closer. These tables can also be used by special interests outside the Government in formulating their proposals for, e.g., increases in wage rates or lower taxation of profits, but they will make demands more reasonable. It seems fairly certain that this kind of approach will ultimately be adopted in all countries. As statistical and economic science advances, more sophisticated methods of forecasting will be possible, always of course with margins of uncertainty; but the role of statistical science will be to narrow these margins.

In simple terms the system of national social accounts envisage the government as a board of directors of the national economy though their concern is less to produce a profit than to see that their personnel (employees and employers and the rest of the population) secure the maximum possible welfare. This is to present the situation in too simple terms, however, for the ends to be attained will include immeasurables and incommensurables which are not additive in the statistical sense.

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Extracts from "The Changes Effected in Recent Land Commission Legislation." By Commissioner Kevin O'Shiel, S.C.

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Economic Holdings

While the first duty imposed by the Legislature on the Land Commission is to vest tenancies in their tenants, they are also charged with a further duty, second only to the former, and an essential complement to it. They are bound to see to it that, as far as possible, every holding in the country, and, in particular, every holding that passes through the vesting channel, will, before reaching the stage of final vesting, be made economic, if it is not already so. Another reason, apart from the proprietor's needs and future independence, why it is essential to secure the vesting of as many sound holdings as possible is, that sub-economic holdings are a dangerous and uncertain security for the advance in Land Bonds, made by the State in respect of them. We are without a precise definition of the expression "*Economic holding*," but its ordinary meaning is always accepted —a holding within whose mearing hedges or walls, a working farmer can support his wife and family in, at least, frugal comfort. Whilst it is generally granted that a holding of not less than £20 P.L.V. conforms with this definition, there are districts where, because of differing circumstances, and living standards, the level has to be lower, and often substantially lower. At all events, on the £20 test, more than two-thirds of all holdings in the country, and more than three-fourths of the Hogan Act holdings, are well below that level, and have a claim in law to be considered for expansion. And the only conceivable way that that can be done is by obtaining the necessary land for that purpose. Hence the reason why the Land Commission has been granted power, and special facilities, by the Legislature to acquire land, compulsorily, if necessary. Unfortunately this great problem can never be solved in terms of land alone, for the simple reason that there is nothing like the amount of land available in the country, to lift up into the economic class, each one of our 270,000 holdings (but, of course, not necessarily occupiers) that are estimated to be below it, and, I fear that, in the long run, a substantial proportion of all holdings concerned will be carried along to final vesting in their tenants, without its having been possible to enlarge them.

Not only is the land scarce; it is, also, mostly situated far away from the congested area, thereby involving, in that area's settlement, a complicated, expensive and often lengthy process of migration. But, whilst this is all too true, there can, of course, be no gainsaying whatever that a vast amount has been, and is being, accomplished with our limited means and resources to relieve the position, and improve immensely the lot of our necessitous and less fortunate agriculturalists; a work that is, clearly, of immense social importance. Keeping in mind the cardinal feature of the Hogan Act's machinery, the vesting current, let us now take a closer look at that part of the machinery dealing with this matter of the compulsory resumption, and acquisition of land.

Tenanted Land

Of the two Statutory denominations into which all land is divided, we shall take Tenanted Land first. This now means any holding that has got as far down the vesting current as the Land Commission, in which it has been duly vested. The Land Commission, being its landlord for the time being, cannot acquire from the tenant its ownership, for that ownership reposes, of course, in the Land Commission. So, if the Land Commission want to get clear possession of such a holding, they must resume the tenancy interest that subsists on it. You might wonder why a tenancy, on its way through the Land Purchase stream, should be resumed at all. There are sound reasons for that. The holding may be in the midst of bad rundale congestion; where 20 or 30 tenants occupy little holdings, cut up into anything from half a dozen to twenty, thirty, or forty separate pieces, scattered about an area of twenty or thirty acres and often much less. To cure this chronic agricultural distemper it is essential to have power to take up these rundale holdings, and then, by migrating a number of the tenants to new holdings, divide the remainder into suitable farm-units, as large as the land available will allow. Again, a holding may be very large indeed, three, four or five hundred acres. It may be let, or ill-used, and it may be suitable for the relief of congestion in the district, or elsewhere. There are, obviously, no grounds for giving such a holding exemption against a well-worked freehold, when it can be put to better and very needful purposes.

Resumption of Holdings

The Hogan Act provided no new machinery for extinguishing a tenancy, and relied for this purpose, on the powers given in the *Land Act, 1881*, which are still living. That Act enabled a landlord to apply to the Court for leave to resume a holding, for one or other of a number of specific purposes, therein set out. The original purposes have been in recent years greatly increased, and extended, by the Legislature, and the present position is, that the statutory grounds for resuming Tenanted Land are, for all practical purposes, identical with the statutory grounds for acquiring Untenanted Land. The Hogan Act directed that, in exercising their powers, the Land Commission were to have regard to the necessity of relieving congestion, the desirability of increasing the country's food supplies, and the manner in which the holdings had been used. The *Land Act, 1939*, was much more sweeping, giving the Land Commission power to resume, not only for the relief of congestion, and increasing the country's food supplies, but also for the purpose of allotting land to the persons or bodies to whom, under the Hogan Act, they were empowered to make advances. That is a very comprehensive list and, theoretically, omits no person or body from the benefits of compulsorily obtained land; but, in actual practice, it is far from being as elastic as it looks. A highly important concomitant, in this matter of compulsory powers, is the compensation that has to be paid to the tenant, when the Land Commission absorb his tenancy. Section 5 of the Land Act, 1881, prescribed that he must get "full compensation," and this rather imprecise expression was defined by a former Judicial Commissioner as being virtually a synonym for Market Value. The *Land Act, 1931*, declared that the Court, in fixing compensation in these cases, may include compensation for disturbance, as well as for certain damages, whilst the *Land Act, 1939*, laid down definitely that the compensation was to be the Market Value of the holding

Let us turn now to the application of these compulsory powers to Untenanted Land.

Compulsory Acquisition of Untenanted Land

Most of the land in this category as its title implies has, unlike Tenanted Land, but one interest subsisting on it, that of its landlord or proprietor. Hence there is, as there must be,

a different way of securing such land. The present procedure for the compulsory acquisition of this kind of land is laid down in the *Land Act, 1936*, which enacts that, whenever the Land Commission propose to acquire compulsorily any land for the relief of congestion, or for the aforesaid persons or bodies, listed in the Hogan Act, the Commissioners must certify that such land is required for either the relief of congestion, or for the said persons or bodies.

As regards the price to be paid for land thus acquired, the last Act made Market Value the standard price here too, thereby putting Untenanted on the same level as Tenanted Land, in this respect. Furthermore, the owner was relieved from having to redeem, out of his purchase money, any advance that might happen to be outstanding on the land.

Market Value is, no doubt, a pretty fair criterion, but, it has the disadvantage of being subject to great fluctuations, and, in a time of agricultural depression, it is capable of dropping steeply to remarkably low depths. However, in recent years, it is maintaining a high degree of buoyancy that shows, for the present, at any rate, little signs of any serious deflation. Before I leave this question of price, I must refer to an innovation, introduced in the *Land Act, 1950*, which enables the Land Commission to buy, for cash, any land offered for sale, if required for migrants' holdings, or to deal with intermixed and rundale plots. So far there have not been many cases under this provision.

Checks on Acquisition

We will now take a look at the restraints and curbs provided by the Oireachtas on these seemingly wide powers. They are partly to be found amongst the exceptions from the Hogan Act, already referred to. These exceptions still stand, but they have been substantially amended. The *Land Act, 1927*, added to the list a new exception ; Untenanted Land used for the purpose of breeding thoroughbred stock, and the *Land Act, 1936*, has declared that whilst the Commissioners are to find whether or not the land is being properly used for producing thoroughbred stock, the Minister for Agriculture is to decide whether or not the stock so found is of a nature and character suitable to the requirements of the country, an obviously wise precaution, because, as we know, there could be a thoroughbred herd of elephants, camels or ostriches, which could hardly be deemed

suitable for Ireland. Even some types of foreign cattle, and horses, could well come properly under such a ministerial ban. As the larger areas of land became exhausted during the first decade, it was found that the original restrictions were too narrow, and unsuitable, to meet the new state of affairs. Hence the veto against the acquisition of land, if there were other suitable unacquired land in the same locality, was repealed by the *Land Act, 1933*. Again, the proprietor of purchased land could no longer escape unless he was a practical farmer, residing on, or near, his land, working it in a husbandlike manner, and was not the owner of other lands exceeding £2,000 in market value, in which test, lands owned by his wife also counted. Thenceforward only such a farmer had to be provided with an alternative holding, if his land was taken up. The same Act also widened the range of compulsory acquisition to include suitable persons, willing and capable of working lands. If, however, the owner was a person entitled to an alternative holding, his land could only be taken from him, compulsorily, for certain limited purposes, of which the relief of congestion was the most important. A further curb limited compulsory acquisition to the relief of congestion in the same locality, or sportsfields for villages, schools, etc., if the owner satisfied the Land Commission on the "*adequate clauses*"—that he was producing therefrom adequate agricultural products, and giving thereon adequate employment, including therein his permanently-employed relatives. These provisions, while protecting the genuine practical agriculturalist, thereby giving concrete statutory shape to the numerous assurances of Ministers in the Oireachtas that persons working their lands well will not be interfered with, opened up a field for inquiry into the, unfortunately, too many farms, and holdings, which were not being worked in a proper manner, or were actually neglected. They touched, however, on smaller parcels of land than had hitherto come under review, and threatened incomes derived from chronic lettings in conacre and eleven months grazings. Acquisitions of this kind have, and are being, strenuously opposed on technical and legal grounds.

I should say that the *Land Act, 1950*, decreed that the full membership of the Land Commission was thenceforward to consist of a Judicial Commissioner, and a maximum of four Land Commissioners. At present there are three Land Commissioners. This Act also added seven more items to the List of Excepted

Matters that the Land Act, 1933, placed wholly within the jurisdiction of the Commissioners, thereby just doubling these matters.

And here I might mention a further factor that compels Commissioners hearing objections and petitions to act with the greatest prudence and circumspection, before making a determination on an issue. Since 1933 there has been no appeal, on the facts, in these cases, from the Commissioners to the higher Courts. That they do so act is, I think, evident from the official returns. In the ten years from 1942 to 1952 some 802 cases were listed for hearing of which 97 were withdrawn. Of the remainder 422 (60%) were disallowed, 246 wholly allowed and 37 partly allowed, equating together to 40% of the whole. The period referred to, it must be remembered, includes the six years of the Second World War when such activities were, necessarily, much reduced in volume.

Appeal to Courts

In addition to all these safeguards there are the High and Supreme Courts to whom, notwithstanding that they are now confined to questions of law, many aggrieved persons appeal, and appeal with success. To deal adequately with the large number of these cases would require a special lecture all to itself. All that I can do to-night is to draw your attention to a few of the more important. Three cases, the *Rafferty*, the *Maria Harte* and the *Peter Alley*, declared that essential parts of the machinery in the *Land Act, 1933*, were ineffective, and made it necessary to provide new procedure in the Land Act, 1936, whereby all such proceedings in future, were to be originated by way of a published Certificate and Provisional List. But this new procedure was soon challenged, and, in the *Nicholas Maher* case, it was declared that the phrase in the *Land Act, 1936*, "a certificate by the Lay Commissioners" meant that such had to be executed by all the then-existing six Commissioners. This had to be rectified by another Act, that of 1939. The effect of adverse decisions in such cases as the *Potterton* and *Maria Nolan* was, that the resumption functions of the Land Commission were virtually paralysed for six years, until legislation in 1939 reopened the road.

And here, to conclude my references, are two very recent cases. The *Crowley Case*, decided by the Supreme Court two years ago, manifested a new departure by aggrieved parties

by-passing the normal avenue of appeal to the Judicial Commissioner, and, instead, going to the High Court for a writ of *certiorari*. This case is far too technical, and complicated, to attempt any summary of it here, but, it is highly important, bearing, as it does, on the nature of the powers exercised by the Commissioners, and the manner in which they should be exercised. If any of you want to read it, you will find it reported in 85 *I.L.T.R.* 26. Another important case that should not be ignored by the student is the *Dunleavy Case*, decided a year ago. In that case, the Land Commission sought to acquire from Thomas Dunleavy, for the relief of great local congestion, 77 acres that he had purchased but 3 years previously. The Supreme Court, in its judgment, declared that the Appeal should be decided on a Report from the Commissioners of the proceedings before them, including a note of the evidence, and of their findings of fact. And, on these grounds, *inter alia*, remitted the matter to the Judicial Commissioner, to re-enter and re-hear, having regard to that declaration.

Such are the existing restraints on any autocratic use, or misuse, of the compulsory powers in the Land Code, and, as I trust I have shown you, they are very far from being deadwood.

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SUPERVISORY POWERS OF LAND COMMISSION

Some time ago an eminent agricultural economist concluded that the Land Acts, in sweeping away the good with the bad landlord, removed an effective and necessary check on inefficient farming that had not been replaced, and he lamented the lacuna thus caused. Whilst we can agree with the professor that the good landlord certainly had that, with other virtues, as rare alas ! as himself, we can assure him that, in practice, there is no such lacuna. The fact that the Land Commission is possessed of wide, compulsory powers and that those powers are invariably directed against such anti-social individuals, has had a salutary effect throughout the country, and has led to many reforms on the part of erring proprietors. In Court proceedings, in acquisition and resumption matters, the Commissioners have time and again reserved judgment, often for one or two years, expressly to give such offenders an opportunity of mending their ways. And this important reminder of the

Land Commission's existence seems to be fully in tune with similar tendencies elsewhere. For no one, at this time of day, can deny the need for some kind of state supervision of a nation's landed resources, so as to secure good husbandry and adequate food production.

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CONSOLIDATION OF HOLDINGS

I want now to draw your attention to a particular question, that constitutes a problem within a problem, of much moment to our agricultural health.

When the great agrarian and socio-economic cyclones of the nineteenth century passed over our country they left in their wake, amongst other ills, the congested townland and village. These dreadful pockets of miserable intermixed and rundale holdings are mainly confined to our western seaboard. They are estimated to affect to-day at least 12,000 tenant purchasers, and are being dealt with as expeditiously as their thorough and radical treatment requires. Many of them have been abolished or, rather transformed into pleasant, well-planned groups of little economic holdings; and others are in process of being so changed. But it will, unquestionably, be a very considerable time before the last of them has been heard of, for it is a tedious business, demanding great patience, assiduity and firmness on the part of the inspectors if enduring results are to be obtained. One that has been dealt with, and that, by no means the worst, will have to serve us as an illustration. In a County Mayo estate a certain townland, comprising 284 acres, was held by 27 tenants, in no less than 450 separate parcels. One tenant held 14 acres in 11 plots spread over 4 miles; another held 19 plots covering a total of 6½ acres. In addition this man had 9 plots still further afield. The remaining 25 tenants were, more or less, similarly situated. The Land Commission resumed 11 of these scattered holdings, giving their tenants fine, standard holdings elsewhere, equipped with dwelling-houses and out-offices, and, with the aid of the surrendered land, smoothed out that bewildering congeries into 16, sound, self-contained farmsteads.

The trouble with places of this kind is, as I have told you, that there is little or no land in the immediate vicinity of the affected townland, and so tenants, who have surrendered their holdings, have to be brought to new holdings in counties like

Meath, Kildare and Westmeath where land, in sizeable blocks, is available. As the big local migrants have become exhausted this involves, to an ever increasing extent, wholesale migrations of farming families, and their establishment on holdings in the east.

The transportation of these colonies was introduced in 1932, when Mr. Joseph Connolly was Minister for Lands, and since then substantial numbers of small farmers from Donegal, Mayo, Galway, Kerry and West Cork, many of them Irish speakers, have been settled in counties like Meath, and Kildare, where their industry, vitality and general keenness are having their effect in areas never conspicuous for those qualities. And this work, too, is reflected in the census returns. In the last censal period County Meath changed a previous decadal deficit of 1,564 in its population to an increase of 4,827, and, seeing that this increase, the first in that county for 96 years, is entirely on land—all its towns actually dropped in population—it must be attributed, in substantial measure, to the work of the Land Commission.

Take the Gaeltacht Colonies established in the districts of Rathcarron, Gibbstown, Kilbride, Allenstown and Clongill in the County Meath between 1935 and 1940. The Land Commission acquired 5,233 acres from seven owners who had been using the land for grazing, or letting it to outsiders for grazing. Of this area the Land Commission allotted 2,304 acres to ex-employees on the estates, and to deserving local allottees. The balance of 2,929 acres (representing a purchase price of £46,469) was divided into 122 new holdings, properly equipped, and into each the Land Commission put a suitably qualified family from the Gaeltacht areas. The total unimproved resale price was £48,926, and £104,612 was spent on developing and improving the holdings. This kind of work, it is true, is expensive ; but, quite definitely, it cannot be called a dead loss, or anything like it. Rather is it an investment that begins to yield profit to the nation in a remarkably short time. And, even were it a monetary loss, like the clearing of the urban slums, no one could advocate, at this late hour in the day, that these rural slums should be denied similar attention.

To get some idea of the results of this Land Commission work, let us look at the 1952 returns for these County Meath Gaeltacht Colonies. These colonies contain 2,929 acres, divided between 122 families, representing 808 persons, of whom 541 were at

home, and subsisting on the holdings. This works out at an average of one person per 5½ acres, as against an estimated one person per 250 acres prior to the division of the land. These people had, in all, 1,792 head of livestock, consisting of 415 milch cows, 631 stores, 329 calves, 103 horses, 11 ponies, 3 foals, 90 sheep and 210 pigs. Over 700 acres were under tillage, and, instead of letting their lands, the reverse is the case; this year they had taken lettings of 629 acres at a total cost of £5,143, an average of 5 acres per family, at a cost of £43. Seven migrants have actually purchased an additional 271 acres of land for which they paid £13,260. This indicates the progressive, go-ahead type they are. And I have heard that, latterly, they have been going in, more and more, for tractors and up-to-date farm machinery. If every proprietor in the country worked his lands anything like as well as these people it would be exceedingly difficult, not to say impossible, to acquire any land compulsorily; but, fortunately or unfortunately, the number of people who let, misuse or neglect their farms are far from rare, thus providing legitimate targets for the Land Commission's activities. A rough calculation estimates that, what with the colonists, and their natural increase, and the necessary accessory population for their maintenance—merchants, tradespeople, craftsmen, not to forget lawyers and doctors—the present population of the townlands affected must be up to 800 where, prior to the Land Commission's action, human beings were few and far between. All these people are living mainly by and from the land, and are all making their contributions to the state's life by their supply of food and livestock every year, and of human stock every generation, to say nothing of their frequent contributions to the state's exchequer in direct and indirect taxation to which but a meagre trickle was previously flowing there. For, as we know, it is not land by itself, however rich, or factories by themselves, however well equipped, that create wealth; in the last analysis it is man.

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Comparison of Farming Methods North and South of the Border

It seems to be the case that our agricultural production has remained practically static in volume for the past 30 years, and this undoubtedly low level of production from our land

has, naturally, been giving concern to our statesmen and experts. Many things are blamed for it, and, not infrequently, we are told that the basic cause of it all is our system of small holdings, and that it will not, or cannot, be corrected until that system has been scrapped, and something in the nature of a co-operative or collective system of big farming areas substituted for it. Now, it is far from me to pass judgment on what kind of agricultural framework this country should adopt, but, in this connection, I should like to refer briefly to conditions in the Six Northern Counties, where we find production on land, and—*mirabile dictu!*—the population on land, increasing. The 1946 census returns reveal that the rural population alone there increased by over 31,000 or 5%, thereby more than compensating for the decrease of 15,000 in the prior decade. Northern Ireland is, to a far greater extent than the Twenty-six Counties, a land of small holdings. As the Northern Minister of Agriculture, Rev. Dr. Moore, recently wrote, "the vast majority of our holdings are family farms—that is to say that the bulk of the work is done personally by the owner, and members of his family." Nearly 40% of all its agricultural holdings are under 15 acres, compared with nearly 28% with us; for all holdings below 30 acres the percentage is 62, compared with 55 with us. And holdings above 100 acres constitute 5% of their total, as against 9.1% with us. So you see we are a land of substantially larger holdings than the Northerners and, of course, we have, on average, much better quality land. It is hard to know why such a discrepancy exists between the two areas, so similar in structure, agricultural organisation and conditions, but, it is certainly not an unfair conjecture to draw, on comparing these figures, that, whatever is at fault, it can hardly be attributed to the small holding system that is common to the whole island.

Another astonishing feature of the Northern position is the heavy mechanisation of its little farms. The latest returns indicate that, within the past ten years, Northern Ireland's tractors have increased in number from 500 odd to over 15,000. Were we as highly tractorised as the North we would have 85,000 tractors instead of our present 16,000.

An inquiry into the causes for the differences between the farming position in Northern Ireland and with us would, I suggest, be highly desirable and useful, and a suitable theme for some of our clever young college students. I know that,

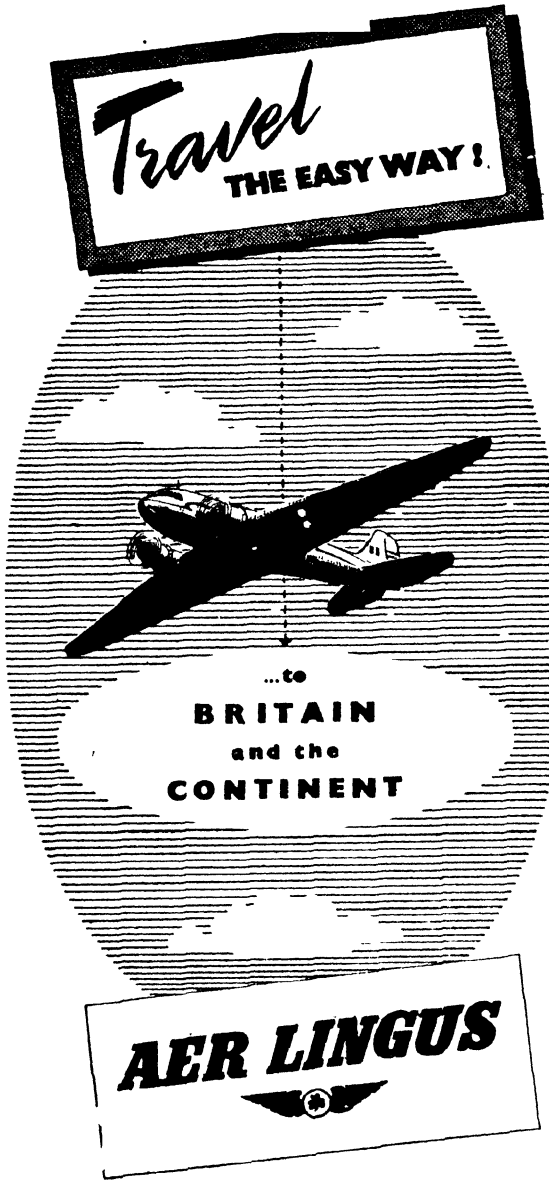
as far as the Land Commission is concerned, our Minister would be only too pleased to give any reasonable facilities to any *bona fide* student to examine the work on the spot, and in terms of land and men, rather than of paper and blue books. And I can assure such an investigator beforehand that he will be surprised at how different the land problem will appear to him when, for the first time, he beholds it in such material and concrete terms. In my long experience of the Land Commission, very few have made such inquiries, and hardly any of our own people; nor can I recollect that any, at all, of our own people ever made field studies of our work. I remember some English journalists, and some Americans, including Dr. Pomfret the author of that fine book, *The Struggle for Land in Ireland*, Miss Elizabeth R. Hooker who wrote that excellent conspectus, *Readjustments of Agricultural Tenure in Ireland*, and Dr. Charles S. Johnson of Fisk University, North Carolina; and I remember a bright little Japanese gentleman, with a celestial smile, who toured round the country, and examined our work there, with bland and careful perspicacity. Such an examination by competent inquirers, with the all-necessary objective outlook, cannot fail to prevent faulty and hastily drawn conclusions from inaccurate or incomplete data, and would make for a true appraisement of the Land Commission's operations that would, clearly, be of the utmost value as a record.

And now for a final word about our land tenure. If our traditional farming system is to undergo a revolutionary change, and the land of this country is to be recast into a number of vast collective, corporative, or, better still, co-operative units, as some sections of opinion have been predicting, then the work the Land Commission is doing, and that I have just described for you, in eradicating the sub-economic holding, must obviously help, rather than hinder, a metamorphosis of that magnitude.

But, so far as one can humanly see, the small family-manned farm, as described by the Rev. Dr. Moore, will remain the farming unit of this country, in the Twenty-Six as well as in the Six Counties, for many a long day to come. And that is a stubborn fact that agrarian reformers should not lose sight of, if their schemes for agricultural reform are to be built on that realistic basis, that alone can assure them a practical measure of success.

But, whilst the family farm remains our stable entity, there

is no reason why its proprietor should not combine voluntarily with his fellow-farmers, for their mutual advantage, if he so wishes, or why there should not be a reasonable share of "lebensraum" for other kinds of farms, inside our agricultural framework—the great mixed farms, the big mechanised farms, run by companies, or societies, as well as for the great grazing "estancias" that fatten dry stock for export.



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