

Passengers with Disabilities

An investigation by the Ombudsman of
complaints against the Revenue Commissioners
about the
refusal of tax relief for cars
adapted or constructed for use by
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A Report to the Dáil and Seanad
in accordance with
Section 6(7) of the
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18 Lr. Leeson St., Dublin 2.
Tel. 01-6785222, Fax 01-6610570
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The complainant names used in this Investigation Report are Mr Smith, Mr Dunne and Mr Kelly. The complainants' names have been changed to protect their identities. Other complainants referred to have also had their names changed.

Mr Smith's Complaint

Background

In March 1997, Mr Smith successfully applied for an exemption from Vehicle Registration Tax (VRT), under Article 10(1) of the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (S.I. No. 353 of 1994), on a car he had bought. Fuel and road tax reliefs were also allowed. He also applied for a refund of VAT on the car.

The VRT relief was claimed in respect of his daughter under the provision in the Regulations relating to passengers with disabilities. It was his third successful application under the scheme. The Revenue Commissioners subsequently decided that Mr Smith's claim to entitlement to an exemption did not come within the terms of Article 10(1) on the basis that his daughter was a full-time resident in a nursing home and was not residing with him as required under the 1994 Regulations.

Mr Smith claimed that it was unfair not to allow him the exemption for the following reasons:

- (i) he had bought a vehicle and it had been adapted so that he could transport his daughter and cater for her personal, social and medical needs;
- (ii) his daughter was not a full-time resident in the nursing home. On medical advice it had been recommended that she should spend some time away from her normal place of residence, the Smith family home. In the past she had suffered a severe mental breakdown and had since been on medication. For these reasons she had been availing of the suitable supervised independent living at the nursing home;
- (iii) under the 1994 Regulations, the term 'residing' is not defined, nor is it specified that the passenger with disabilities must be residing 'full-time' with the applicant;
- (iv) under Article 10(5)(a) of the Regulations, the Revenue Commissioners may waive the residency condition in exceptional circumstances. Mr Smith claimed that, if it was considered that his claim to entitlement to a rebate of VRT was not compatible with the residency requirements of the Regulations, his case merited exemption under Article 10(5)(a) and that Revenue was acting contrary to fair and sound administration in failing to exercise their discretion under this Article.

Facts established in the preliminary examination

The 1994 Regulations govern the remission or repayment of VRT and other related taxes on a vehicle for use by a driver or a passenger with disabilities. Article 10(1) of the Regulations provides, *inter alia*, that where a person satisfies the Revenue Commissioners that he/she is a family member of a passenger with disabilities, residing with and responsible for the transportation of that passenger, he/she shall be entitled to be repaid VRT in respect of a vehicle purchased for the purpose of transporting the passenger. Article 10(5)(a) grants the Revenue Commissioners discretion to waive the condition concerning the residency of a claimant in exceptional circumstances.

Mr Smith's application was received by Revenue on 12 March 1997. His daughter entered the nursing home in February 1997 when it first opened. At the time of application his daughter had been in the nursing home for a very short time, probably less than four weeks. Following enquiries made in June and September 1997 by the Revenue official responsible for auditing the scheme, who is known as the Control Officer, it emerged that the complainant's daughter had been resident in the home from the time

it had opened and that she was transported to and from the home by her parents for day trips on a regular basis.

On the basis of this evidence, Mr Smith was asked to repay to Revenue VRT totalling £5,949 on the grounds that, as he was neither residing with nor responsible for the transport of his daughter, he did not meet the residency requirement and did not qualify under the Regulations. Mr Smith was requested on 13 October 1997 to repay the VRT and was advised of his right of appeal against the decision.

Revenue letter to Mr Smith

*Disabled Drivers Section
Customs & Excise
13/10/97*

Dear Mr Smith,

I refer to your remission of VRT totalling £5,949 on motor vehicle registration number (number deleted) on 27/03/97 under the Disabled Drivers and the Disabled Passengers (Tax Concession) Regulations 1994.

As you are neither residing with nor responsible for the transport of your daughter, Anne Smith, you do not qualify under the above regulations.

By contravening Section 139(3)(d) of the Finance Act 1992, the vehicle is liable to seizure under Section 139(2) of the Finance Act 1992.

A bank draft for £5,949, made payable to the Revenue Commissioners should be forwarded to this office within fourteen days, i.e. 22/10/97. The Vehicle Registration Certificate should also be forwarded so that any restriction on the disposal can be removed.

On receipt of the above monies, the Revenue Commissioners may not institute legal proceedings.

This decision may be appealed. I am enclosing form C&E 6 for your information.

In repaying the VRT, Mr Smith exercised his right of appeal. He addressed his appeal to the Collector, Customs and Excise, Customs House, Galway citing the fact that his daughter was not living in the nursing home on a permanent basis. His letter of appeal was forwarded to the Collector, Customs and Excise, Custom House, Dublin in October 1997. On 13 November 1997, the Collector wrote to Mr Smith stating that, as his daughter was a full-time resident of a nursing home, her case did not come within the terms of Article 10(1) of the 1994 Regulations. Mr Smith was advised that he could make a further appeal to the Appeal Commissioners.

Having issued the letter to Mr Smith, the Collector sent a memo to VRT Administration Branch, Office of the Revenue Commissioners, in which he said:

- (a) the Smith case was not unlike another case (the Duffy case) where the residency requirement was waived and VRT exemption was allowed;
- (b) Mr Smith appeared to be reasonably open in his dealings with Revenue;
- (c) that he (the Collector) was inclined to believe that Mr Smith transported his daughter fairly regularly; and
- (d) the fact that his application at the time of completion described his residence as her address was not unreasonable as he would regard it as her family home.

Responding to the Collector's memo, another Revenue official in the VRT Administration Branch

considered that, while there were similarities between the two cases (Smith and Duffy), there were two basic differences:

- (i) in the Duffy case the applicant had stated from the outset that the passenger with disabilities was non-resident and had never tried to conceal or exaggerate the actual position; and
- (ii) a social worker had confirmed relevant statements made by the applicant regarding the circumstances of the passenger with disabilities in the Duffy case and had made a strong case as regards the importance of trips home for him. He added that there was no equivalent letter in the Smith case.

Mr Smith appealed to the Appeal Commissioners in December 1997 stating that, if the arguments previously made in respect of residency were not acceptable, the exceptional circumstances waiver provided for in Article 10(5)(a) should apply in his case. The appeal was heard on 31 March 1998. The determination of the Appeal Commissioner was that relief should be refused as the daughter was not residing with her father.

The Appeal Commissioner did not make a determination as to whether the exceptional circumstances provided for in Article 10(5)(a) applied in Mr Smith's case. According to the Office of the Revenue Commissioners, the Appeal Commissioners had accepted in a similar case that the determination of exceptional circumstances was a matter wholly at the discretion of the Revenue Commissioners and was not a matter on which the Appeal Commissioners could adjudicate. In that particular case, the Appeal Commissioners had concurred with the view put forward by a Revenue official who had maintained that it was clear that the determination of exceptional circumstances was delegated by the Minister for Finance, through the Regulations, to the Revenue Commissioners and that the Appeal Commissioners had no role to play in the matter. The Appeal Commissioner's role was in relation to establishing the facts of the case and to ensuring the correct application of the law.

Mr Smith's letter to the Ombudsman, 27 April 1998

Anne is presently living in the Nursing Home but she still spends a considerable amount of her time at home, as our house has been fully adapted for her needs.

I was fully aware when I signed the documentation to apply for the VRT of the "Residency Requirement" under the Disabled Drivers and Passengers (Tax Concessions) Regulations 1994 but my family and I regard Anne as being as much resident in our house as in the Home.

If Anne had been a little better physically, she would be able to drive herself and the issue of 'residency' for the VRT would be obsolete in her case.

I believe that the attempts of my daughter to live independently should not be penalised by the withdrawal of the VRT from my car.

The Other Complaints

In the course of my examination of Mr Smith's complaint, I received four other complaints about the refusal of relief under the 1994 Regulations on grounds that the residency requirement had not been met by the applicant. Two of these complaints, those of Mr Dunne and Mr Kelly, are also the subject of this

investigation. The other two complaints - from Ms Moore and Ms Flynn - were resolved to the satisfaction of the complainants; some details of these complaints are given below.

Mr Dunne

Mr Dunne applied for tax relief on behalf of his 84 year old mother who had been granted the primary medical certificate required for qualification under the scheme [the primary medical certificate is provided by the local Health Board where the Senior Area Medical Officer is satisfied that the person meets the scheme's medical criteria]. Mr Dunne lived a short distance from his mother's house with his wife and children. His application for relief was refused on the grounds that he was not residing with his mother. This decision was upheld on appeal and the Revenue Commissioners also stated that the particular circumstances of the case were not of an exceptional nature to warrant the exercise of the waiver of the residency requirement under Regulation 10(5)(a). Mr Dunne was informed of his right to appeal to the Appeal Commissioners but did not exercise this right within the prescribed 30 day period.

Mr Kelly

Mr Kelly applied for tax relief under the Regulations on behalf of his wife. Mrs Kelly had been granted the primary medical certificate required for qualification under the scheme. Due to the fact that it was not possible for her family to provide the proper nursing care appropriate for her disability at home, she became a resident in a nursing home. Mr Kelly's application for relief was refused on the grounds that he was not residing with his wife. This decision was upheld on appeal. Mr Kelly's request for a hearing before the Appeal Commissioners was refused as it was deemed that he did not have valid legal grounds for such an appeal. He was advised that he could appeal the decision to refuse him access to the Appeal Commissioners. He chose not to do so.

Mr Kelly's appeal to Revenue, 29 September 1998

What is central to my appealing the decision is the fact that my wife not residing with me was not a choice and in the circumstances I feel that the Regulations set out in the letter dated 17/9/98 are too restrictive and unrealistic in my situation and must be for many thousands of people physically handicapped who are no longer able to be looked after in the family home.

My wife Marion is totally paralysed and is unable to move a finger and therefore cannot assist herself in any way. Consequently neither myself (now 65 years of age - Marion is 57) nor my three daughters can continue to lift Marion out of her wheelchair and out of the normal private car - hence the decision to seek an alternative means of transport.

Our entire family are very conscious of the quality of life for Marion who still enjoys life in spite of terrible illness. The nursing home will not provide any means of transport.

On a lighter note I suppose if I joined my wife in the nursing home as a resident I would qualify under the said Regulations!!!

The Revenue Commissioners also indicated that Article 10(5)(a) of the Regulations which provides for the waiver of the residency requirement in exceptional circumstances was taken into account but that the circumstances of the Kelly case were not considered to be of an exceptional nature for the purposes of the Article. In this connection, I asked the Revenue Commissioners what type of circumstances would

be regarded as exceptional under the Article and to give specific examples of cases where the residency requirement had been waived in accordance with Article (10)(5)(a).

In their response, the Revenue Commissioners said that by their very nature "exceptional circumstances" were circumstances that do not arise on a regular basis and as such cannot be made the subject of predetermined criteria. In general terms, the sort of circumstances that were envisaged were those that could not have been foreseen at the time the Regulations were drawn up. Each such case was considered on its own merits and was regarded as being *sui generis*. In considering any such application, the totality of the case was looked at and all the circumstances, as represented to Revenue, were taken into account. Revenue would take into account, for example:

- the extent to which the person with disabilities was reliant on the applicant for transport and the other transport options available;
- the degree to which transport of the person with disabilities was required;
- the level of usage of the vehicle for that purpose;
- financial hardship, e.g., where the applicant did not own a vehicle and could only afford to purchase one where relief was granted;
- physical hardship, e.g., age or incapacity of applicant or other family member;
- the proximity between the two residences concerned, etc.

The Commissioners pointed out that this list was not exhaustive but was an indicator of the type of considerations that can arise. They added that, because such cases are *sui generis* and "non-precedential", a formal record of cases where the waiver is allowed was not maintained. However, they said that in a recent application the waiver was allowed where the applicant was required, under contract with the residential home, to take his son home for visits on a regular basis and to provide the necessary transportation. The applicant in that case was an old age pensioner who represented to Revenue that he had no vehicle at the time of application, would not otherwise have required one and would not have been able to afford one without the tax relief. In another case, the applicant and the person with disabilities lived in immediately adjoining residences which shared a common entrance - in effect it was decided that the residency rule was met in that case.

Ms Moore

Ms Moore applied for tax relief under the Regulations on behalf of her daughter. Ms Moore's daughter had been granted the primary medical certificate required under the scheme. On the application form Ms Moore indicated that her daughter was resident both at the home address and at a nursing home. The Revenue Commissioners refused the application on the basis that the residency requirement was not being complied with.

The decision was upheld on appeal and a hearing before the Appeal Commissioners was requested. This request was granted but, while this appeal was waiting to be heard, the Revenue Commissioners reviewed the case in the light of her complaint to me and decided that, for the purposes of the relief sought, Ms Moore could be regarded as resident with her daughter. The relief was subsequently allowed. In arriving at this decision the Revenue Commissioners said that they took account of the following circumstances:

- the fact that the daughter was under 18 years of age and a minor;

-
- the amount of time spent by the daughter with her family, in total more than five months in the year; and
 - the degree of the daughter's dependency on the applicant, in particular for transport, on a day-to-day basis.

Ms Flynn

Ms Flynn applied for tax relief under the Regulations on behalf of her son. Ms Flynn's son had been granted the primary medical certificate required under the scheme. On the application form Ms Flynn indicated that her son was in residential care in a nursing home. The Revenue Commissioners refused the application on the basis that the residency requirement was not being complied with. This decision was upheld on appeal and Ms Flynn was advised as to the procedure for having the refusal dealt with by the Appeal Commissioners.

The decision was subsequently reviewed by the Revenue Commissioners in the light of additional information supplied by Ms Flynn and the decision taken in the Moore case referred to above. As a result of this review, the Revenue Commissioners decided to accept that the residency rule was complied with in this instance bearing in mind:

- the fact that the son was a minor and under the general care of his parents;
- the proportion of time spent with his parents on a regular and ongoing basis;
- the son's dependence on his mother to provide for his transport needs on a day-to-day basis.

Background to the scheme for tax relief for drivers/passengers with disabilities

The scheme for tax relief for drivers/passengers with disabilities owes its origins to Section 43 of the Finance Act, 1968 (No. 33/1968). This Act introduced an exemption from road tax for vehicles adapted or constructed for and used by persons with disabilities who were wholly or almost wholly without the use of both legs. Section 43(1) provided:

"Where a person shows to the satisfaction of the licensing authority that, in consequence of injury, disease or defect, he is wholly, or almost wholly, without the use of each of his legs, the duty imposed by section 1 of the Finance (Excise Duties) (Vehicles) Act, 1952, shall not be charged or levied in respect of a vehicle specially constructed or adapted for use by the person as driver and used by him either as driver or passenger."

Because of the limited medical criteria specified for qualification under the original scheme it was decided to broaden the scope of medical eligibility. Section 92 of the Finance Act, 1989 (No. 10/1989) included a provision which enabled the Minister for Finance to make regulations providing for the refund of road tax, excise duty and VAT on vehicles used by persons with certain severe and permanent disabilities and for the repayment of excise duty on petrol and auto-diesel used in those vehicles. Section 92(1) provided:

"Notwithstanding anything to the contrary contained in any enactment, the Minister for Finance may, after consultation with the Minister for Health and the Minister for the Environment, make regulations providing for –

- (a) the repayment of excise duty and value-added tax and the remission of road tax in respect of a motor vehicle used by, and*
- (b) the repayment of excise duty relating to hydrocarbon oil used for combustion in the engines of vehicles, to be specified in the regulations, by,*

a severely and permanently disabled person—

- (i) as a driver, where the disablement is of such a nature that the person concerned could not drive any vehicle unless it is specially constructed or adapted to take account of that disablement, or*
- (ii) as a passenger, where the vehicle has been specially constructed or adapted to take account of the passenger's disablement, and where the vehicle is adapted, the cost of such adaptation consists of not less than 30 per cent. of the value of the vehicle excluding tax and excise duty, or such lesser percentage in respect of certain cases as may be specified by regulations in respect of the repayment of any tax relating to adaptation costs only."*

Following enactment of the Finance Act 1989, a working group comprised of representatives of the National Rehabilitation Board, the Revenue Commissioners and the Departments of Finance, Health, and Environment was established to advise on the formulation of the Regulations which eventually resulted in the Disabled Drivers (Tax Concessions) Regulations, 1989 (S. I. No 340 of 1989). The Regulations came into operation on 21 December 1989.

The scheme brought into effect by the 1989 Regulations was aimed primarily at drivers but it also covered passengers with disabilities. In the case of qualifying passengers, the scheme covered vehicles specially

adapted to take account of their disability, subject to the cost of such adaptation amounting to at least 30% (later reduced to 20% and later again to 10%) of the pre-tax cost of the vehicle.

Review of the Regulations

Following the making of the 1989 Regulations, an undertaking was given that the scheme would be reviewed after a year in operation. For various reasons, this review did not take place until 1993. The review included consultations with the Departments of Health, Environment, Justice, and the Directors of Community Care in the Health Boards, the Disabled Drivers Medical Board of Appeal and the Revenue Commissioners.

In relation to passengers with disabilities, the review noted that under the then existing Regulations the requirement was that the person with disabilities actually purchase the vehicle in respect of which tax exemption was being claimed. In practice, as the review also noted, the Revenue Commissioners had interpreted this requirement flexibly, for example by allowing parents to claim in respect of their qualifying children and by letting organisations for persons with disabilities claim in respect of their patients. However, notwithstanding this practice, as a result of the review it was recommended that the Regulations be amended to allow the relief in circumstances, for example, where a vehicle was purchased by a family member for the transportation of a passenger with disabilities, provided the vehicle met the adaptation requirements. The recommendation was that:

"Disabled drivers must still purchase their own vehicles. However, family members should be allowed claim the reliefs available under the scheme in respect of a vehicle owned by them (which is being used to transport a qualifying disabled person as a passenger) and which otherwise meets the existing adaptation requirements"

In a separate note the reason for this particular recommendation was outlined as follows:

"To avoid possible abuses, disabled drivers must personally purchase their vehicles. However it is considered reasonable that one family member etc. may purchase a vehicle for a qualifying disabled passenger who cannot physically effect purchase e.g. disabled children, wheelchair or stretcher bound cases etc. Similarly organisations caring for the disabled may claim in respect of qualifying persons in their care."

Under the new arrangements, as an alternative to the passenger purchasing the vehicle, a family member could purchase a vehicle. However, in order to ensure that there were no abuses of the scheme, it was decided that family members of passengers with disabilities should live with the passenger. It was felt that this would prevent people from claiming for relatives in residential care who would not benefit from the scheme even if vehicles were adapted.

With regard to drivers with disabilities, the review noted that it was a specific requirement of the scheme that the vehicle concerned be specially constructed or adapted to take account of the driver's disability. Where passengers with disabilities were concerned, the nature of adaptations required to the vehicle related to the passenger's transport requirements.

The review report also noted that:

"It is unrealistic and unreasonable to expect adapted vehicles to be used exclusively for the transport of the disabled passenger at all times. For example, family members may

presumably use the vehicle when it is not needed to transport the disabled person. Such incidental use is considered acceptable if the principal benefit from the vehicle derives to the disabled passenger and significantly improves that persons mobility"

The views of the Opposition spokespersons in the Dáil and the principal organisations representing persons with disabilities were sought on the review before finalisation of the process and the implementation of any amendments to the Regulations arising out of the review's recommendations. Following the consultation process, it was decided by the Department of Finance that changes recommended as a result of the review could be accommodated by way of amending regulations rather than requiring action on primary legislation. The Revenue Commissioners were requested to draft regulations incorporating the review recommendations.

The Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994

Drafting of the amending Regulations commenced early in 1994 and was undertaken by the Indirect Taxes Division, Office of the Revenue Commissioners, in consultation with the Budget and Economic Division of the Department of Finance. In a record of a conversation between two officials involved in the drafting of the Regulations which took place on 6 July 1994, the following comment was made:

"Family members of disabled passengers should live with the passenger to combat abuse of people claiming for relatives in residential care who will not benefit from the scheme even if vehicles adapted etc."

In September 1994, a provision was included in the draft Regulations which covered the circumstances in which the residency requirement relating to passengers with disabilities would apply. This additional requirement was incorporated in the final version of the Regulations which was signed by the Minister for Finance on 24 November 1994 and which came into effect on 1 December 1994.

The Article in the Regulations dealing with reliefs for passengers with disabilities is Article 10. This Article provides:

"(1) Where a person satisfies the Revenue Commissioners that that person is a severely and permanently disabled passenger or a family member of such a disabled passenger residing with and responsible for the transportation of that disabled passenger and such person has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which —

(a) has been specially constructed or adapted for use by that disabled passenger, and where the vehicle is so adapted, the cost of such adaptation excluding value-added tax consists of not less than the amount specified for the purpose in section 92(1) of the Finance Act, 1989:

Provided that in calculating the cost of adaptation of such vehicle, if the Revenue Commissioners so approve, there shall be included —

- (i) the cost of conversion of that vehicle, excluding the additional vehicle registration tax incurred in such conversion, and*
- (ii) the purchase cost excluding value-added tax of any adaptations previously fitted to another vehicle adapted for use by that disabled passenger, and refitted to the vehicle in question,*

(b) has been purchased by the disabled passenger or by the said family member of that disabled passenger for the purpose of transporting that person, and

(c) is fitted with an engine whose capacity is not greater than 4,000 cubic centimetres,

the person who has borne or paid the said amounts of tax and residual vehicle registration tax shall be entitled to be repaid same, subject to the limit specified in Regulation II for the purposes of this Regulation:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the said person has purchased the vehicle in question from an authorised person.

(2) Where at the time of registration of a vehicle by a severely and permanently disabled passenger or by a family member of a severely and permanently disabled passenger residing with and responsible for the transportation of that disabled person and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (c) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 11 for the purposes of this Regulation."

Article 10(5)(a) provides for a waiver of the residency requirement in respect of passengers with disabilities:

"In exceptional circumstances, the Revenue Commissioners may waive the condition concerning residency of a claimant under Regulation 10."

The Administration of the Scheme

In order to qualify for refunds of taxes under the scheme, a driver or passenger has to be regarded as a person with severe and permanent disabilities. Under the 1994 Regulations, a "severely and permanently disabled person" is one who meets the requirements of one or more of the following medical criteria:

- (i) wholly or almost wholly without the use of both legs;*
- (ii) wholly without the use of one of their legs and almost wholly without the use of the other leg such that they are severely restricted as to the movement of their lower limbs;*
- (iii) without both hands or without both arms;*
- (iv) without one or both legs;*
- (v) wholly or almost wholly without the use of both hands or arms and wholly or almost wholly without the use of one leg;*
- (vi) a person with dwarfism and who has serious difficulties of movement of the lower limbs.*

In order to qualify for refunds of taxes, an applicant must meet the medical criteria and must get a medical certificate to that effect from the Director of Community Care and Medical Officer of Health of the relevant Health Board. Appeals against decisions of the Director of Community Care relating to the medical criteria can be made to the Disabled Drivers Medical Board of Appeal. This Board consists of three doctors and is appointed by the Minister for Health and Children.

An applicant who receives the requisite medical certificate then completes the prescribed form DD1. An applicant must submit a completed DD1 form plus a medical certificate from the Health Board Director of Community Care to Disabled Drivers Section, Office of the Revenue Commissioners, Coolshannagh, Co. Monaghan. If the applicant meets the required conditions he/she may get a refund or a remission of Vehicle Registration Tax and VAT paid on a vehicle adapted for a person with disabilities. An applicant may also get a refund of any additional excise duty charged on the adaptation.

A person admitted to the scheme may claim repayment of VRT and VAT on the purchase of a motor vehicle, and also of the VAT on the cost of adaptation, up to a maximum of £7,500 for a driver with disabilities and £12,500 for a passenger with disabilities. Relief is restricted to a vehicle which has been specially constructed or adapted for use by a person with disabilities.

Analysis

Having carried out a preliminary examination of the complaints received, and having considered the responses received from the Revenue Commissioners, I decided to proceed with the investigation of the complaints. I notified the Revenue Commissioners of my decision to investigate the complaints under Section 4 of the Ombudsman Act, 1980, on 28 May 1999. I also informed the Revenue Commissioners that, in deciding to investigate, I had taken into account the provisions of Section 5(1) of the Ombudsman Act, 1980 and that it appeared to me that the special circumstances of these complaints made it proper for me to investigate them. Section 5(1) of the Ombudsman Act deals with exclusions to my jurisdiction.

Jurisdiction of the Ombudsman

The Ombudsman Act, 1980 at Section 5(1)(a)(iii) provides that I shall not investigate any action taken by a public body if the person affected by the action has a right of appeal, reference or review to a body which is not within my remit. Each of the complainants in these cases had such a right of appeal to the Appeal Commissioners. Decisions of the Appeal Commissioners do not come within my jurisdiction. Mr Smith exercised this right of appeal, Mr Kelly was refused permission to appeal (although he was advised of his right to appeal this refusal to the Appeal Commissioners) and Mr Dunne did not exercise this right within the specified time limit. The Ombudsman Act also provides, however, that, notwithstanding the provisions of Section 5(1)(a), I may investigate actions to which this subsection relates if it appears to me that special circumstances make it proper to do so. In these cases, I decided that such special circumstances existed for the following reasons:

- (i) Given the fact that the Appeal Commissioners have accepted that the determination of exceptional circumstances provided for in the 1994 Regulations at Article 10(5)(a) is a matter solely for the Revenue Commissioners and that they have no role to play in the matter, it seems that there is no right of appeal in cases which may hinge on this Article.
- (ii) To my mind, the circumstances surrounding each of these cases are special; each of the complainants is a dedicated carer struggling to provide support for a loved one with disabilities and doing so in the face of enormous difficulties.

Scrutiny of Secondary Legislation

In Chapters 2 and 3 of this Investigation Report, I have dealt with the background to the provision of tax relief for drivers and passengers with disabilities and with the introduction of the 1994 Regulations. I am concerned that the imposition of the residency requirement in respect of the tax relief for passengers with disabilities may be *ultra vires* the terms of the Finance Act, 1989. There is no reference in the Act to a residency requirement yet this is introduced in the Regulations. I have commented in my Annual Reports and in other published Investigation Reports, notably the Report on Lost Pension Arrears (June 1999) and the Report on Nursing Home Subventions (January 2001) on the lack of scrutiny by the Oireachtas of the terms of secondary legislation and the need to ensure that such regulations stay within the terms of the relevant primary legislation. I do not propose to comment in detail on this issue in the present report.

The investigation of these complaints has centred on the following matters:

- (i) the purpose and scope of the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations;
- (ii) the terms and conditions of the scheme;
- (iii) the residency question;
- (iv) the circumstances in which the residency requirement may be waived; and
- (v) the particular treatment of the complainants by the Revenue Commissioners.

In accordance with Section 6(6) of the Ombudsman Act, 1980, I gave a draft of this report to the Revenue Commissioners in order to allow them to make representations to me in relation to any finding or criticism adverse to them in the draft report. I have incorporated their comments, where appropriate, in this report.

The purpose and scope of the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations

The scheme governing the provision of tax relief for drivers and passengers with disabilities was introduced to enhance the potential for mobility of qualifying persons with disabilities by providing tax relief on the purchase, adaptation and use of vehicles. The financial benefits of the scheme are significant and the scheme plays a direct and positive role in improving the quality of life of those drivers or passengers who benefit under the scheme by:

- increasing opportunities for participation in the community;
- promoting social inclusion;
- encouraging independence and personal development and
- improving potential opportunities for employment.

Under the scheme, a new car may be purchased every two years free of VAT and VRT, subject to certain monetary limits. In addition, the annual road tax is not charged and the qualifying person is eligible for the provision per annum of 2,728 litres of road fuel free of excise duty. The operation of the scheme has substantial cost implications for the exchequer and these are increasing with the growth in participation in the scheme. For example, in 1994 the cost of the scheme was in the region of £4m; in 1999 the cost increased to £18m. The most recent information available indicates that in 2000 the cost would be £21m and the forecast for 2001 is £25m.

Eligibility under the scheme is restricted to specific categories of persons with disabilities. In this regard it is estimated that, of the 350,000 persons in the State with some form of disability, roughly only 7,000 actually benefit under the scheme.

I accept that the cost of the scheme and the fact that public monies are involved require that there should be strict accountability in terms of the operation of the scheme. However, it is also the case that the scheme should be reviewed in the light of the increased awareness of the needs of persons with disabilities and the new and very welcome emphasis on equality and tolerance of diversity. While the residency requirements are the focus of this investigation, it is apparent that the limited definition of disability also requires review as does the language employed in the Regulations. The Report of the Commission on the Status of People with Disabilities noted in 1996 that the term "people with disabilities" was preferable to the term "the disabled" if only to emphasise that people with disabilities are people first and foremost. The Report also recommended that the medical criteria governing eligibility for both drivers and passengers be reviewed. As with other schemes operated by public bodies, I am concerned as Ombudsman that such schemes should be operated sensitively and with regard to the particular needs of potential beneficiaries under the scheme. I understand that an inter-departmental group, chaired by the Department of Justice, Equality and Law Reform, is currently reviewing the Regulations.

The Terms and Conditions of the Scheme

The terms and conditions of the scheme provide for an entitlement to tax relief for two categories of passenger with a disability: (i) where he/she is the purchaser of the vehicle and (ii) where a family member purchases a vehicle which is used to transport the passenger. In the case of (i), there is no

residency requirement whereas with (ii), the family member must reside with the passenger.

It is clear that in the cases which are the subject of this investigation each of the passengers in respect of whom the relief was claimed:

- (i) possessed the medical certification for eligibility under the scheme, and
- (ii) were passengers or prospective passengers in vehicles which had been suitably adapted to cater for their particular type of disability.

It is also apparent that each of the passengers involved in these complaints could have purchased the vehicle for which the tax reliefs were claimed and in which they were to be transported. If they had done so, each would have qualified for tax relief under Article 10(1) of the Regulations as each would have been a

"... severely and permanently disabled passenger ..." and would have "... borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which ..." had "... been specially constructed or adapted for use by that disabled passenger"

In none of these cases was there an impediment which would have prevented the purchase of the vehicle by the passenger. As is mentioned in Chapter 2 of this report, under the previous scheme the requirement was that the passenger actually purchase the vehicle in respect of which tax exemption was being claimed. In practice, however, the Revenue Commissioners had interpreted this requirement flexibly by allowing for example parents to claim in respect of their children and by letting organisations for people with disabilities claim in respect of their patients.

Article 10(1) gives rise, therefore, to a distinct anomaly in that the tax relief would have been available in each of these cases without any material change in the circumstances of the individuals concerned provided the vehicle had been purchased by the passenger. However, in these cases the relief has been refused because the vehicle was purchased by a family member rather than the passenger.

This is an example of like cases not being treated in like manner. In my **Guide to Standards of Best Practice for Public Servants**, published in conjunction with my Annual Report for 1996, and to which the Revenue Commissioners pledged that they would adhere in their own **Customer Service Standards**, I pointed out that public bodies, with a view to achieving the highest standards of administration in dealing with the citizen, should ensure that citizens are dealt with fairly. In this regard I said that dealing 'fairly' with people meant treating people in similar circumstances the same way. The effect of the decision of the Revenue Commissioners in respect of these cases is that the applicants are being treated unfairly, in that the tax relief which otherwise would have been available if the person with a disability had purchased the vehicle, is being refused because the applicant is the person responsible for driving the passenger with a disability rather than the passenger himself or herself.

Residency

The sole reason put forward by the Revenue Commissioners for refusing tax relief in each of these cases was that the applicants were not residing with the passenger. As I mentioned earlier, there is no residency requirement specified in the primary legislation. In the Regulations the term 'residing with' is not defined nor is it specified that an applicant should be residing 'full-time' with a passenger with disabilities. It would seem reasonable to assume that the reason why these terms are not rigidly defined was to provide some latitude for the exercise of discretion in the assessment of the merits of individual

cases. It is evident that this discretion was exercised in an effective and constructive manner in the past by the Office of the Revenue Commissioners and in a number of other cases which this investigation has brought to attention.

It is also reasonable to assume that normally 'residing with' would imply some form of sharing the same residence. However, there are clearly very many instances where a person could be regarded as residing with another person even though, in the short term or even over an extended period, this would not involve sharing a residence, e.g., civil servants, army and Garda personnel serving abroad or on border duties, commercial travellers, Dáil Deputies and MEPs, charity workers, hospital patients and prisoners. It was never envisaged that such individuals would be excluded from participating in this scheme.

Furthermore, in tax legislation, 'residency' is open to a number of interpretations. For example, in the case of relief from VRT on transfer of residence, in order to qualify for relief a requirement in respect of residency abroad must be met. In the case of a transfer from outside the EU, an applicant must have had their normal residence outside the EU for a continuous period of at least 12 months prior to transfer. In this context, normal residence is defined as meaning the place where the applicant usually lived, for at least 185 days in the year ending on the date of transfer.

The rules for determining the residence of an individual, and the consequent effects on personal taxation are set out in the Finance Acts of 1994 and 1995. Under these rules an individual will be regarded as being resident in the State for a tax year if he or she (i) spends 183 days or more in the State in that tax year or (ii) has a combined presence of 280 days in the State, taking into account the number of days spent in the State in that tax year together with the number of days spent in the State in the preceding tax year.

In the case of persons with disabilities, it is to be expected that periods of hospitalisation or extended nursing home care may be a feature of their lives and that such periods may be protracted.

In the case of Mr Smith, the application was made on behalf of his daughter in March 1997, a short time after she had moved into the nursing home. He stated on the application form that she was resident with him in the family home. While his daughter was residing in the nursing home at the time of the application, it was for a trial period in accordance with medical advice with no clear indication at that stage that it was to be a long-term arrangement. In this context it is reasonable to conclude that her father was fully justified in stating in the application that she resided in the family home.

In the case of Mr Dunne, the evidence indicates that while he was not occupying the same house as his mother, both residences are on the same holding located a short distance apart. This is quite a common arrangement in the farming community and is seen as both a desirable and practical arrangement suitable for maintaining the extended family unit intact while at the same time preserving a degree of independence for the family members.

The circumstances of Mr Dunne's case are not unlike that of another case of an application for tax relief under the scheme (Ms Walsh) where the Revenue Commissioners exercised their discretion in a positive and caring manner when they accepted that the residency requirement was met where the passenger with disabilities lived next door to the applicant.

Mr Dunne's solicitor complains to the Ombudsman, 22 December 1998

Our client's cottage is sufficiently close to the farmhouse where his mother now resides on her own for him to be in almost around the clock contact with her.

The farmyard immediately adjoins her farmhouse and this is where our client runs his dairy operation. One or other of his family stays with his mother at night-time. This is Elizabeth Dunne's preference as it still leaves her with a measure of independence in her own home yet she and her family have the comfort of knowing that our client Mr Dunne and his family are at hand twenty four hours a day.

.... Our client not only has a legal but a moral obligation to look after his mother. It is incomprehensible to him having provided the car seat which is an absolute necessity for her mobility in car transport terms why, from what appears to be an overly strict interpretation of the Regulations in the particular circumstances in our client's case, the relief is being refused.

The farmhouse is approximately six miles from the nearest town and three and a half miles to the nearest village. Without the purpose built seat Mrs Dunne can only with severe pain and discomfort get in and out of the car with an ordinary passenger's seat.

It is therefore an absolute necessity for her to have the special seat in order to get to Mass, to visit the remainder of her family, and to get to the Doctor's surgery.

In the case of Mr Kelly, his wife had been resident in the nursing home since 1987. In his application Mr Kelly acknowledged that he was not residing with his wife. However it is evident from this investigation that, in interpreting the residency requirement, the Revenue Commissioners have, in cases where the passenger with a disability was in long-term residential care, exercised their discretion so as to ensure that deserving cases, which initially did not appear to fall within the strict terms of the Regulations, benefited under the scheme. This is evident from the revised decisions in the Moore and Flynn cases referred to earlier. In these cases, the passengers with disabilities residing on an extended basis outside the home were deemed to be resident with the applicants.

While I acknowledge that the Revenue Commissioners take the view that the Duffy, Walsh, Moore, and Flynn cases are "*sui generis* and non-precedential", I consider that in exercising a discretionary power either to waive the residency requirement or to interpret it in a liberal manner, cognisance must be taken of the factors which influenced similar decisions of this nature. I believe that the factors which influenced the Revenue Commissioners to determine that the residency requirement was met in the Moore and Flynn cases also applied in the Kelly and Smith cases. This would have been the case even if it was deemed that Mr Smith's daughter was permanently resident in the nursing home. In addition, the factors which influenced the decision to determine that the residency requirement was met in the Walsh case also applied in the Dunne case.

Waiving the residency requirement

Under Article 10(5)(a) of the 1994 Regulations, the Revenue Commissioners can waive the residency requirement where it is deemed that exceptional circumstances exist. The question of waiving the

residency requirement was raised by Mr Smith as part of his appeal to the Revenue Commissioners. This request was considered by Revenue but was rejected on the grounds that the particular circumstances of his case were not considered to be of an exceptional nature for the purposes of Article 10(5)(a).

The waiver was considered by the Revenue Commissioners in an assessment of the entitlement of another applicant, Mr Duffy, who had applied on behalf of his son. Mr Duffy's son was in full-time residential care in a nursing home and travelled home every second weekend as well as spending Christmas, Easter and part of the summer holiday with his family. In this case the residency requirement was waived.

As mentioned in Chapter 1, the similarities between the Duffy and the Smith cases were commented upon by the Revenue Official who had dealt with Mr Smith's appeal when he stated in an internal memo to another official that he considered that Mr Smith's case was not unlike the Duffy case. The second official's view was that there were two basic differences between the cases. These were that (i) in the Duffy case the applicant stated from the outset that the passenger was non-resident and has never tried to conceal or exaggerate the actual position and that (ii) the Duffys had produced documentary evidence in the form of a letter from a Senior Social Worker which not only confirmed the statements made by them but also made a very strong case as regards the importance of trips home.

The implication of this comment was that Mr Smith had tried to conceal or exaggerate the actual position in respect of his daughter's residency. As I mentioned earlier, it is reasonable to conclude that Mr Smith was fully justified in stating in the application that his daughter resided in the family home and this could not be regarded as an attempt to conceal information. This view is also supported by the first Revenue official in his note of 13 November 1997 when he said that the fact that Mr Smith had shown his residence as his daughter's address is not so unreasonable as he would regard it as her family home.

When the case was selected for audit, the Control Officer met with Mr Smith in June 1997. In his report he noted that Mr Smith informed him that his daughter had gone to stay in a Dublin nursing home for a couple of days and at times stayed in the local nursing home rather than at home and that he took her on drives from time to time.

In September 1997, in interviews with staff from the nursing home, the Control Officer noted that Mr Smith transported his daughter to a day care centre and that he observed her doing so and that at weekends and holiday periods her father was responsible for her transport. The Control Officer's report does not indicate to me that Mr Smith tried to conceal the fact that his daughter was in the nursing home. He readily acknowledged the fact when asked and added that she had spent some time in the Dublin nursing home. Neither did he exaggerate the position with regard to the extent to which he was responsible for the transport of his daughter. In fact on the basis of the Control Officer's reports it is clear that his statement 'that he took her on drives from time to time' is an understatement rather than an exaggeration based on the information contained in a later report of the Control Officer.

The Revenue official's second reason, and the one he regarded as the more important of the two, as to why the Duffy case differed from the Smith case, related to the documentary evidence produced concerning medical circumstances. This evidence, in the form of a letter from a Senior Social Worker, confirmed the statements made by the parents in respect of their son's medical circumstances and made a very strong case with regard to the importance of trips home. In the case of Mr Smith's daughter, no equivalent evidence was produced. It is true to say that there was no equivalent to the Duffy letter in

the Smith case. However, this is not to say that Mr Smith would not have been able, if requested, to provide equally compelling evidence regarding the circumstances of his daughter's stay in the nursing home and the importance of trips home, to the day care centre and for leisure purposes.

In the case of Mr Kelly, his wife was resident in a nursing home on a long-term basis. As in the Duffy case documentary proof could have been provided, if Revenue had so requested, of the circumstances of his wife's stay in the nursing home and the importance of trips outside the nursing home to support the waiving of the residency requirement.

The factors which influenced the decision to waive the residency in the Duffy case would also have been present in the Smith and Kelly cases. In neither the Smith nor the Kelly cases, however, were the applicants asked to present a case for a waiver of the residency requirement on the lines applied in the Duffy case. In my view, there is a compelling case for Revenue to make public the factors which it considers important in the exercise of the residency waiver. This is also a legal requirement under the Freedom of Information Act, 1997.

The treatment by the Office of the Revenue Commissioners of the applications made by Messrs Smith, Dunne and Kelly.

In the Charter of Rights published by the Revenue Commissioners, they state that their clients are entitled to expect that at all times their staff will carry out their duties courteously and considerately and that their clients will be presumed to have dealt with their tax affairs honestly. Clients are also told to expect that every reasonable effort will be made to give them access to full accurate and timely information about Revenue law, and their rights and obligations under it, and to advise them of their right to object to a charge to tax or duty, if they consider that the law has been applied incorrectly and to have their case reviewed.

Revenue reject Mr Dunne's application

Dear Mr Dunne,

I refer to your application under the Disabled Drivers and Disabled Passengers (Tax Concessions) Regs 1994 in respect of a vehicle for transporting your mother Mrs Elizabeth Dunne as a disabled passenger.

It is a fundamental requirement for relief under the above regulations that the applicant is resident with the disabled passenger in question. Following a routine audit of your application it has been established that your mother is not resident with you, despite your declaration to the contrary on application form DD1. Accordingly your application for relief is refused.

It is a serious offence to make a false declaration to obtain tax relief and the Revenue Commissioners would be justified in instituting legal proceedings against you. In this instance, this course of action is not being pursued at present. However, I must warn you that similar leniency will not be shown in future.

I am enclosing leaflet C&E 6 for your information.

The correspondence which issued to the complainants from Revenue refers to the fact that each individual was deemed not to qualify under the Disabled Drivers and the Disabled Passengers (Tax Concessions) Regulations and that they had a right of appeal. The correspondence also makes reference to

- (i) the possibility of legal proceedings being initiated (Smith and Dunne);
- (ii) the possibility of vehicle seizure (Smith);
- (iii) the fact that it is a serious offence to make a false declaration to obtain tax relief (Dunne);
- (iv) that it was a fundamental requirement that an applicant resided with the disabled passenger (Smith and Dunne and Kelly).

The explicit threats referred to at (i), (ii) and (iii) indicate that Revenue failed to meet its own stated commitments in respect of their clients' entitlement to courtesy, consideration, a presumption of honesty and a right of independent review. In addition, the information contained in (iv) contradicts the commitment to provide full accurate and timely information about Revenue law as, contrary to what was conveyed to the complainants in correspondence from the Revenue Commissioners, it is not a fundamental requirement that the applicant resides with the person with disabilities because the Regulations provide that this requirement can be waived.

Revenue reject Mr Kelly's application

17/09/1998

Dear Mr Kelly,

I refer to your application for a repayment of VAT and/or VRT on a vehicle under The Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994.

Under the above regulations, where a claim is made by a family member for a Disabled Passenger, that family member must be residing with and be responsible for the transport of the Disabled Passenger.

As you do not reside with the Disabled Passenger, it is regretted that the Revenue Commissioners are not in a position to authorise a payment in this instance.

If you wish you may appeal this decision, see C&E 6 enclosed.

Please note that the above address is Freepost



Findings

I found that the decisions not to grant tax relief in these cases were unreasonable, unfair and inappropriate for the following reasons:

- (a) the scheme allows passengers with disabilities to qualify without having to meet a residency requirement if they purchase the vehicle. In these cases each of the passengers could have effected the purchase of the vehicle and qualified for the relief without any material change in their circumstances having occurred;
- (b) the relief had been allowed by Revenue in three instances where the subjects were residing in nursing homes or their equivalent. In two of these cases Revenue stated that the decision had been influenced to a great extent by the fact that the passenger was a minor. In the cases of Mr Kelly and Mr Smith, I am satisfied that the passengers with disabilities, although adults, were equally if not more dependent on the applicants for transport as a minor would be. However, in commenting on a draft of this report, Revenue stated that it believed that the decision that Mr Smith was not residing with his daughter as required by the Regulations, was correct;
- (c) in the case of Mr Dunne, the circumstances of his case were not dissimilar to those which applied in the Walsh case where the relief was granted. However, in commenting on a draft of this report, Revenue contended that there were real and significant differences between the two cases.

I found the treatment of these cases by the Revenue Commissioners to be contrary to fair or sound administration for the following reasons:

- a) by making explicit threats to the applicants of the possibility of legal proceedings, vehicle seizure and the imposition of penalties for false declarations, where a right of appeal had yet to be exercised by those applicants, Revenue's actions fell far short of any acceptable standard of dealing properly, fairly and impartially with its clients. In commenting on a draft of this report, Revenue accepted that the letters which issued to the applicants fell short of the standard expected in this regard and has taken steps to ensure that letters of this nature would not be issued in the future;
- (b) by insisting that the residency requirement was a fundamental requirement for eligibility under the scheme, and by failing to seek evidence or make the applicants aware of the type of circumstances where the residency requirement could be waived, the Revenue Commissioners failed to provide full and accurate information to enable the applicants to pursue their entitlements.

I believe that the "*sui generis* and non-precedential" approach to these cases by the Revenue Commissioners is not conducive to fair and sound administration and has introduced an arbitrary element in deciding on taxpayers' entitlements. The absence of guidelines in relation to the operation of the residency requirement is not consistent with good administrative practice.

I chose not to explore fully the issue as to whether the imposition of the residency requirement by the 1994 Regulations may be *ultra vires* the Finance Act, 1989, since this is not essential to my investigation of the complaints at hand. However, I may return to this point at a later date if the circumstances of a future investigation make it necessary for me to do so.

In approaching more recent cases involving the 1994 Regulations, it is evident that the Revenue Commissioners have moved towards a more liberal definition of the residency requirement rather than using the discretion granted to them under Article 10(5)(a) which provides for a waiver of the residency

requirement in exceptional circumstances. While I welcome a more realistic approach to the residency issue - an approach which may be more in keeping with that adopted, for example, in the Social Welfare code - it is also the case that a discretionary power which was included in the Regulations for the specific purpose of facilitating consideration of exceptional cases, should not be ignored. A decision not to use such a discretionary power is tantamount to fettering that discretion and would itself be contrary to fair administration.

Recommendations

I recommended that:

Each of the three complainants should be deemed by Revenue as eligible for the tax reliefs available under the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (S.I. No. 353 of 1994).

The VRT recouped from Mr Smith in respect of his motor vehicle in the sum of £5949 should be repaid to him and his application for the other tax reliefs available, i.e. a repayment of VAT on the vehicle and exemption from road tax and relief from excise duty for the relevant period, should now be processed for payment.

The applications of Mr Dunne and Mr Kelly in respect of the tax reliefs applied for under the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations should also now be processed for payment.

Revenue should put in place, as soon as possible, arrangements whereby it can, in the interests of equity, carry out a review of cases where applicants were refused the reliefs available under the Regulations on grounds which are similar to those applicable in the cases which are the subject of this investigation. Revenue should report to me within six months on progress in regard to implementing this recommendation

Documentation relating to the scheme should be reviewed with a view to giving more information to potential applicants, in particular, with regard to the waiver of the residency requirement, an outline of acceptable exceptional circumstances where a waiver has been granted in the past and of appeal procedures available. These details should also be included in the Revenue's Section 16 Freedom of Information Manual.

Administrative procedures and documentation used in the processing of applications and informing applicants of the result of their applications should be urgently reviewed and amended where necessary to reflect good administrative practice and the Revenue Commissioners' *Charter of Rights for Taxpayers*.

Revenue's Response to the Investigation Report

The Revenue Commissioners accepted my recommendations in full.

Revenue also made a number of general points, including the following:

- (i) Revenue maintained that it has endeavoured to carry out its obligations under the VRT legislation and Regulations in a fair, reasonable and professional manner and has been conscious of the

need for a balanced and sympathetic approach while administering the Disabled Drivers and Disabled Passengers Scheme. Revenue stated that the increasing numbers of cases involving passengers with disabilities (from 780 in 1997 to 1689 in 2000) in which relief has been granted demonstrates this approach.

- (ii) Revenue questioned whether a tax based scheme is the most appropriate model for dealing with the transportation needs of people with disabilities.
- (iii) Revenue stated that it intended approaching the Department of Finance with a view to reviewing the Regulations again and that my Investigation Report would also be brought to the attention of the Department of Justice, Equality and Law Reform, chair of the inter-departmental group which is currently reviewing the scheme.

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Tel. 01-6785222, Fax 01-6610570
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