

**Chapter 15:****Financial (C): Taxation, Commercial Rates and Social Insurance*****Summary of findings:***

*This Chapter additionally sets out the relevant legislation and practice of the Revenue Commissioners in relation to charitable tax exemptions. The Magdalen Laundries were, from an early stage, adjudged by the Revenue Commissioners to meet the applicable tests for the charitable tax exemption.*

*This Chapter further addresses the question of commercial rates and rates exemptions. The Committee found that the Magdalen Laundries were in general rated at a central level. In one case, a Magdalen Laundry was exempt from rates for the entire period of its operation. In five cases, Magdalen Laundries were rated both prior to and after the establishment of the State. Finally, in four cases, Magdalen Laundries were exempt from rates prior to the establishment of the State but were subsequently rated at differing points after the establishment of the State.*

*This Chapter also addresses the question of social insurance. It sets out the legislative requirements and thresholds which applied over the relevant periods to determine whether or not employment was insurable and applies those tests to the case of the women who worked in the Magdalen Laundries. It includes information on the case of a woman whose work in a Magdalen Laundry was assessed contemporaneously by the relevant State authorities and found not to be insurable.*

*In that context, this Chapter also records details of a redundancy rebate claim identified by the Committee in relation to a small number of women who worked in a commercial laundry which succeeded a Magdalen Laundry.*

**Introduction**

1. Chapter 14 addressed the question of State contracts for laundry services with the Magdalen Laundries. The Committee considered that issue as part of the overall landscape of State interaction with the Laundries and in an effort to identify and, where possible, quantify what might be considered as the indirect financial support provided by the State to the Magdalen Laundries in that way.
2. For similar reasons of setting out the widest possible picture of State interaction with the Magdalen Laundries, the Committee also examined the status of the Magdalen Laundries from a revenue (taxation) perspective, as well as their status in the system for commercial rates and rates exemptions.
3. This wide approach was adopted by the Committee to ensure that all areas would be examined where possible indirect financial benefits might have accrued to the Magdalen Laundries.
4. The Committee engaged in this respect with the Office of the Revenue Commissioners, the Valuation Office and the Department of Social Protection, to determine the historic operating status of the Magdalen Laundries from the perspectives of these Offices and any records which might exist in this regard.
5. The Committee engaged with these offices with the full assistance and cooperation of the Religious Congregations, without in any way contravening the strict confidentiality rules which apply to revenue matters.
6. The issue of the charitable tax exemption is one of the issues addressed in this Chapter. It may be noted, however, that the Office of the

Commissioners of Charitable Donations and Bequests has no role in relation to this issue. The relevance of that Office to the Magdalen Laundries is dealt with separately in Chapter 17.

**A. Taxation - the charitable tax exemption**

7. This Section sets out the investigations carried on by the Committee in relation to charitable status or what is more frequently referred to as the charitable tax exemption. The rules and practices applied in relation to charitable tax exemptions across the full period of concern to the Committee, namely from 1922 until 1996, were explored with the Office of the Revenue Commissioners.

8. This Section sets out the results of this exercise, covering the general rules in relation to charitable exemptions, the practices of the Revenue Commissioners in the administration of the charitable tax exemption and the practical implications of these rules and practices for the Magdalen Laundries. The status granted to certain Magdalen Laundries is also recorded.

*i. General rules relating to charitable tax status*

9. The Charities Act 2009 provides, as part of a comprehensive review of Irish law in relation to charities, for the establishment and maintenance of a Register of Charitable Organisations. The relevant provisions of that Act have, however, not yet been commenced, and in any event having regard to the fact that the last Magdalen Laundry closed in 1996, do not relate to the issues under examination by this Report.

10. In relation to the time period under consideration by the Committee, there was no single body charged with the registration, regulation or oversight of charitable bodies – and this will remain the case until commencement of the 2009 Act.

11. Instead, what is commonly referred to as ‘charitable status’ related (and at present still relates) to the recognition of a body of persons or a trust established for charitable purposes as being eligible for a charitable tax exemption.
12. A charitable tax exemption has existed at all times since the foundation of the State. The Office of the Revenue Commissioners has confirmed to the Committee that its role has always been to administer the exemption and that it has never held any responsibility in relation to the registration, regulation or oversight of charitable bodies.<sup>1</sup>
13. The legislative basis for the charitable tax exemption at the time of the foundation of the State was the Income Tax Act 1918. A charitable tax exemption has existed at all times since then, with the legislative basis under which the exemption is currently available being the Taxes Consolidation Act 1997.
14. In establishing the exemption, neither the 1918 Act nor the intervening Taxes Acts defined the meaning or scope of the terms “charity” or “charitable purposes”, other than by reference to each other.<sup>2</sup>
15. The Office of the Revenue Commissioners has confirmed that in the absence of any such definition in the Taxes Acts, it “has therefore looked to the general law relating to charities to find a definition of ‘charity’ and ‘charitable purposes’”, in order to fulfil its role in the administration of the exemption.<sup>3</sup>
16. As a result, the general legal criteria upon which the Office of the Revenue Commissioners relies in determining eligibility for the charitable tax

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<sup>1</sup> Letter dated 3 August 2012, Revenue Commissioners to the Inter-Departmental Committee.

<sup>2</sup> For example, section 30 of the Finance Act 1921 provided that “the expression ‘charity’ means any body of persons or trust established for charitable purposes only”

<sup>3</sup> Letter dated 3 August 2012, Revenue Commissioners to Inter-Departmental Committee.

exemption are also those used by the Courts in determining whether or not a particular organisation is a charity.

17. An Act dating to 1634, now repealed, is still generally considered as the starting point of modern charity law and a guide in determining the scope of the term “charity”. The Office of the Revenue Commissioners confirmed that, as a result, it has regard to that Act and the development of the general law on charities from that time onwards. Insofar as relevant to this Report, the Statute of Charitable Uses (Ireland), 1634 provided that dispositions:

“... for the erection, maintenance or support of any college, school, lecture in divinity, or in any of the liberal arts or sciences, or for the relief or maintenance of any manner of poor, succourless, distressed or impotent persons, or for the building, re-edifying or maintaining in repair of any church, college, school or hospital, or for the maintenance of any minister and preacher of the holy word of God, or for the erection, building, maintenance or repair of any bridges, causeways, cashes, paces and highways, within this realm, or for any other like lawful and charitable use and uses, warranted by the laws of this realm, now established and in force, are and shall be taken and construed to be good and effectual in law”.<sup>4</sup>

18. Although this Act has been repealed, it heavily influenced the development of charity law and the Office of the Revenue Commissioners has confirmed that:

“The principles laid down in the Charitable Uses Statutes, and adopted in judicial decisions over many years, as to what types of disposition were to be regarded as valid gifts for charitable purposes, are broadly the principles to apply in deciding what are (or are not) charitable purposes for the tax exemptions”.<sup>5</sup>

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<sup>4</sup> 10 CH 1 Sess 3, c 1

<sup>5</sup> Letter dated 3 August 2012, Revenue Commissioners to Inter-Departmental Committee.

19. Other than the broad brush of charity law, the question of charitable tax exemptions has also been considered by the Courts. *IT Comrs v Pemsel*<sup>6</sup> is considered the leading tax case on the subject, in that it grouped charitable purposes into four general categories, namely:
- Relief of poverty;
  - Advancement of education;
  - Advancement of religion; and
  - Other purposes beneficial to the community not falling within the other three categories.
20. These four general categories of charitable purposes, commonly referred to as Pemsels Rule, have been accepted by the Irish Courts both for the purposes of Irish law generally and for tax law in particular.
21. This is a two-stage test and, in addition to falling within one of these categories, the Office of the Revenue Commissioners points out that there is a requirement for public benefit, that is, a benefit arising from the activities either to the general public or to a sufficient section of the public.
22. In both Irish and UK charity law, there is a presumption of public benefit in relation to the category of advancement of religion and this presumption was made conclusive in Ireland by the Charities Act 1961.
23. The position in relation to any possible profits of trades was also explored by the Committee with the Revenue Commissioners. It might be thought that if an otherwise charitable body carried on a trade from which it derived profits, it might not be eligible for a charitable tax exemption. However, section 30 of the Finance Act 1921 had the effect that the profits of a trade were exempt from tax where the work in connection with the trade was

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<sup>6</sup> [1891] AC 531 at 538

mainly carried out by the beneficiaries of the charity. It established, in pertinent part, that exemption would be granted from income tax:

“in respect of the profits of a trade carried on by any charity, if the work in connection with the trade is mainly carried on by beneficiaries of the charity and the profits are applied solely to the purposes of the charity”.<sup>7</sup>

24. A similar provision remains in place today in the form of section 208 of the Taxes Consolidation Act 1997, which provides that a charitable tax exemption may be granted from income tax chargeable on the profits of a trade carried on by a charity, if the profits are applied solely for charitable purposes and either:
- the trade is exercised in the course of the actual carrying out of the primary purpose of the charity; or
  - the work in connection with the trade is mainly carried on by beneficiaries of the charity.

*ii. Procedures for administration of the charitable tax exemption by the Office of the Revenue Commissioners*

25. The process for administration of the charitable tax exemption has differed over the time-period under examination by the Committee.
26. Today, formal application procedures are in place for organisations seeking to avail of the charitable tax exemption, including a requirement to submit to the Revenue Commissioners an application appending the Governing Instruments of the body as well as other documents. The Office of the Revenue Commissioners has confirmed to the Committee that a comprehensive vetting and review is carried out on all such applications; and the Office also carries out periodic reviews to ensure that, once granted charitable tax exemption, the body or organisation in question continues to comply with the terms of the exemption.

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<sup>7</sup> Finance Act 1921, Section 30(1)(c)

27. However, the Office of the Revenue Commissioners confirmed to the Committee that, prior to October 1996, there was no such formal application process for organisations seeking to obtain a charitable tax exemption. The system which evolved and was in place at all relevant times prior to 1996 was as follows.
28. If an organisation sought to obtain a charitable tax exemption, it was necessary for the organisation to submit a claim for repayment of tax deducted *after* a taxable event - that is, any situation where tax was paid to Revenue by, or on behalf of, an organisation.
29. In consideration of the repayment claim, the Office of the Revenue Commissioners would then satisfy itself whether or not the body in question was entitled to the charitable tax exemption on the basis of the test set out above, that is, Pemsels Rule. There was no requirement, at that stage of initial assessment, to submit accounts or other supporting documentation to the Revenue Commissioners. However, if the Office had any concerns in any particular case as to whether or not the activities of a body making a claim were charitable, it would have been open to it to carry out further investigations, including by seeking copies of accounts or other such documents.
30. If, after its assessment of the application, the Office of the Revenue Commissioners was satisfied that the body in question was entitled to a charitable tax exemption, the repayment claim was approved and the tax deducted was repaid.
31. After the first such successful claim for repayment of tax by a body on the basis of the charitable tax exemption, the practice of the Office was to assign that body a charity number ("CHY number"), with the effect that

subsequent claims could be repaid in a more streamlined fashion and with what the Office termed “minimum checking”.<sup>8</sup>

32. During the time-period under examination by the Committee, there was no ongoing review or monitoring to ensure that bodies assigned a charity number continued to operate for charitable purposes. Nor was there a requirement for organisations granted a charity number to submit accounts to the Revenue Commissioners on a regular basis. Rather, the checking procedures historically adopted by the Office of the Revenue Commissioners for the period in question were limited to ensuring that the tax being repaid had in fact been deducted and paid to Revenue; that the income which gave rise to the tax was the income of the relevant charitable body; and that the correct applicant was being repaid.<sup>9</sup>
33. The Office of the Revenue Commissioners, reflecting on this historic approach, has noted that the perceived risk of tax evasion amongst charitable bodies would have historically been considered minimal and that the monitoring procedures of the time reflected this, commensurate with the perceived risks involved.<sup>10</sup>

*iii. Application of these principles to the Magdalen Laundries*

34. The Office of the Revenue Commissioners has confirmed that during the period 1921 to 1996 and in general:

“Religious Congregations and other ancillary bodies operating under their control would have qualified for charitable tax exemption under a number of charitable purpose headings, including the advancement of religion, in line with the definition of charitable purposes contained in both English and Irish case-law”.<sup>11</sup>

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<sup>8</sup> Letter dated 3 August 2012, Revenue Commissioners to Inter-Departmental Committee.

<sup>9</sup> Id

<sup>10</sup> Id

<sup>11</sup> Id

35. The Office further informed the Committee that this would have been the case in the State and:

“during the period in question, the activities of Religious Congregations or Congregations would have been generally accepted as charitable by Revenue”.<sup>12</sup>

36. Specifically in relation to the four relevant Religious Congregations, the Office indicated that they would have been entitled to a charitable tax exemption:

“on the basis that their activities contained the necessary elements of charitable purpose and public benefit required under one or more of the four headings defined in the *IT Comrs v Pemsel* ruling”.<sup>13</sup>

37. Chapter 20 of this Report considers, on the basis of the Congregation’s financial accounts, the financial viability of the Magdalen Laundries. The analysis contained in that Chapter challenges the perception that the Magdalen Laundries were highly profitable. However, regardless of that matter, in line with the applicable principles for the charitable tax exemption set out above, and in particular in light of the fact that the work in connection with the trade was mainly carried on by the women who lived in these institutions, any profits earned by the Magdalen Laundries would not in general have had an impact on the application of the charitable tax exemption. Rather, the Office of the Revenue Commissioners has confirmed that the provisions of the Acts set out above:

“would ensure that the bodies you describe in your letter would have been entitled to a charitable tax exemption on the basis that the work of any trade they may have been carrying out was mainly carried on by the beneficiaries of the charity and that any profits arising were applied solely for charitable purposes”.<sup>14</sup>

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<sup>12</sup> Id

<sup>13</sup> Id

<sup>14</sup> Id

38. This would not have been the case for every trade or activity carried out by Religious Congregations. For instance, a knitting industry operated by the Sisters of Mercy in Galway with paid employees did *not* qualify for the charitable tax exemption; while the Magdalen Laundry (where the work was carried out not by employees but by the women who lived there) *did* qualify.
39. The Committee also examined the archives of the Religious Congregations to identify any possible records relating to charitable status. In the case of two Magdalen Laundries (Donnybrook and Peacock Lane), the Committee identified the Charity Number which had been granted by the Revenue Commissioners, which allowed additional searches to be carried out by that Office on its records.
40. In both cases, the Revenue Commissioners confirmed to the relevant Religious Congregation that the Magdalen Laundries had both been first granted the charitable tax exemption and thereafter a Charity Number in 1921. In both cases, the relevant Charity Number is no longer operational (amalgamated with the Charity Number for the Provinciate).<sup>15</sup>

## B. Rates and rates exemptions

### *i. Introduction and general law on rates and rates exemptions*

41. The primary legislation relating to rates is the Poor Relief (Ireland) Act 1838. With the exception of the Local Government (Financial Provisions) Act 1978 (which removed domestic dwellings from rates liability) and a Supreme Court decision in 1984 which exempted agricultural land from rates<sup>16</sup>, only minor changes and adjustments have been made since 1838 to the operation of the rating system.

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<sup>15</sup> Letter dated 4 January 2013 Revenue Commissioners to the Religious Sisters of Charity.

<sup>16</sup> Brennan v. Attorney General [1984] ILRM 355

42. Section LXIII (63) of the Poor Relief (Ireland) Act 1838 states that no:

“Building used exclusively for charitable Purposes, ... shall be rateable, except where any Private Profit or Use shall be directly derived therefrom, in which Case the Person deriving such Profit or Use shall be liable to be rated as an Occupier according to the annual Value of such Profit of Use”.<sup>17</sup>

43. A good description of the nature of the charitable exemption from rates is provided by the Report on Exemptions from and Remissions of Rates, 1967.<sup>18</sup> That Report was issued by the Inter-Departmental Committee on Local Finance and Taxation, which had been established by the Minister for Local Government, comprising officials of the Departments of Agriculture and Fisheries, Education, Finance, Health and Local Government, with a mandate:

“to examine and report on the present system of financing the operations of local authorities, the changes, if any, which are desirable in the present system and the sources of local revenue as an alternative or supplement to rates which it may be considered practicable to recommend”.<sup>19</sup>

44. The Second Report of the Committee, on exemptions and remissions from rates, reviewed “the great variety and number of rating concessions, the basis for these concessions and their effects on the local taxation system” and made recommendations “as to the rules which, in the Committee’s view, should govern rating concessions in the future”.<sup>20</sup> The Report was published by Government “for the general information of the public and to stimulate constructive comment”.<sup>21</sup>

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<sup>17</sup> Section LXIII (63) of the Poor Relief (Ireland) Act 1838

<sup>18</sup> Government Publications PR 9378

<sup>19</sup> Inter-Departmental Committee on Local Finance and Taxation, Report on Exemptions from and Remissions of Rates, 1967, at page 5

<sup>20</sup> Id

<sup>21</sup> Id

45. The Report notes the various exemptions which applied, including for example property used for public purposes within the meaning of the Poor Relief (Ireland) Act 1838 and the Valuation Ireland Acts 1852 and 1854, semi-state bodies, and property used for charitable purposes.<sup>22</sup>

46. It was, however, acknowledged that anomalies and uncertainties existed in the rating and valuations system:

“These statutory exemptions and the great body of judicial decisions relating to them have brought about many rating anomalies. The position in this regard can be illustrated by some examples of current rating concessions in Dublin City, many of which are based directly or consequentially on the 1838 and 1854 Acts. The Dogs and Cats Home at Grand Canal Quay is exempt from rates. The premises of the Royal National Lifeboat Institution are rated. The Institute for Industrial Research and Standards is exempt but the Institute for Advanced Studies is rated”.<sup>23</sup>

47. The Report confirmed that Reformatory and Industrial Schools were exempt from rating “on the basis of the public purposes which they fulfil”.<sup>24</sup>

48. The question of the charitable exemption was considered in some detail by the Report. It confirms that the Poor Relief Act identified rateable properties, followed by a general exception:

“provided also that no church, chapel or other building exclusively dedicated to religious worship or *exclusively used for the education of the poor*, nor any burial ground or cemetery, *nor any infirmary, hospital, charity school or other building used exclusively for charitable*

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<sup>22</sup> Noting in particular that:

“Under section 2 of the Valuation (Ireland) Act 1854, the Commissioner of Valuation must distinguish in the valuation lists premises of a public nature or used for charitable purposes or for the purposes of science, literature and the fine arts. Hereditaments so distinguished are to be exempt from rating as long as they continue to be used for the purposes mentioned”. (Id at paragraph 8)

<sup>23</sup> Id at paragraph 9

<sup>24</sup> Id at paragraph 39

*purposes*, nor any building, land or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom ...”<sup>25</sup>

49. The Report then refers to section 2 of the Valuation (Ireland) Act 1854:

“ ... in making out the lists or tables of valuation mentioned in the said firstly herein before mentioned Act, the Commissioner of Valuation shall distinguish all hereditaments and tenements, or portions of the same, of a public nature, *or used for charitable purposes*, or for the purposes of science, literature and the fine arts, as specified in an Act of the sixth and seventh years of Her Majesty, Chapter 36 and all such hereditaments or tenements or portions of the same, so distinguished, shall, so long as they shall continue to be of a public nature, and occupied for the public service, or used for purposes aforesaid, be deemed exempt from all assessment for the relief of the destitute poor in Ireland and for grand jury and county rates”.<sup>26</sup>

50. The Report confirms that, in relation to the consideration of charitable status for tax purposes, the interpretation of charitable purposes in regard to rates relied on the decision in Pemsel’s case:

“Legal interpretation gives to the word ‘charitable’ a wider scope than in everyday usage. An authoritative ruling on the meaning to be placed for fiscal purposes on the phrase ‘charitable purposes’, was given by the House of Lords in Pemsel’s case. The House explicitly related its interpretation of ‘charitable purposes’ to land and buildings in Ireland as well as England and held that in interpreting the phrase in any Act regard should be had to the Charitable Uses Act 1601, in which education, relief of poverty, religion and other works of public advantage are separately distinguished as charitable purposes. This implies, for example, that education is charitable in its own right without

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<sup>25</sup> Id at paragraph 23 (emphasis in original)

<sup>26</sup> Id at paragraph 23 (emphasis in original)

any necessity to find an eleemosynary element in any particular form of education”.<sup>27</sup>

51. The Report, building on these comments, notes that two questions have given rise to the “most difficulty in the Irish courts” in this regard, namely:

“(a) should the requirement in section 2 of the 1854 Act on the Commissioner of Valuation, in making out the valuation lists, to distinguish certain properties as being exempt from rating, be regarded as superseding the exemption given by the 1838 Act, and

(b) should the term “charitable purposes” be interpreted in the Pemsel sense, i.e. as having a wider scope than in the purely eleemosynary sense?”.<sup>28</sup>

52. The Report thereafter reviews a variety of cases relating to rating, building on the so-called Derry Bridge case which found that the Valuation Acts did not create new or abolish old obligations, but only:

*“provide a machinery for valuing property according to the standards provided by the existing legislation. This exemption from rating under section 63 of the Act of 1838 on grounds of the charitable nature of use was restricted to property used exclusively for such purposes”.*<sup>29</sup>

53. It suggested that Irish courts had generally adopted this interpretation of charitable purposes, namely that the charitable exemption was limited to property used exclusively for charitable purposes.<sup>30</sup> The Report ultimately recommended that, as one of the principles which should govern rating exemptions and remissions, that:

(c) “Charitable purposes” should secure exemption only where property is used to provide, on a non-profit basis, services of general public

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<sup>27</sup> Id at paragraph 23 [Note: “eleemosynary” means of or relating to or supported by charity]

<sup>28</sup> Id at paragraph 24.

<sup>29</sup> Id at paragraph 25 (emphasis in original)

<sup>30</sup> Id at paragraphs 26-29, referring to a range of case-law, some of it contradictory, on the subject.

benefit and of a social, public assistance or similar character such as might otherwise have to be provided by a public authority.<sup>31</sup>

*ii. Archives of the Valuation Office and status of the Magdalen Laundries*

54. All the Religious Congregations relevant to this Report were considered charitable organisations. On the basis of the principles set out above, it might have been possible that some of the properties coming within the scope of this Report might have been exempt from rates as charitable institutions.
55. The Committee decided that it should, on the basis of the archives of the Valuation Office, determine precisely what status the Magdalen Laundries had in relation to commercial rates for the entire period of relevance (1922-1996).
56. The archives of the Valuation Office hold records including maps and rateable valuation records dating back to 1850. At the request of the Committee, a search was carried out to determine the position of each of the ten Magdalen Laundries and in particular, whether they were considered exempt from rates or otherwise.
57. Searches were carried out covering from at least the 1920s or earlier until the 1970s to match the Magdalen Laundries with the entries on the historic valuation lists. The following were the results of the searches conducted.
58. Five of the ten Magdalen Laundries were rated prior to establishment of the State and continued to be rated after the establishment of the State, as follows:

*- High Park, Drumcondra (closed 1991)*

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<sup>31</sup> Id at paragraph 94(c)

Searches were conducted of all Valuation Office records from 1916 onwards. The Magdalen Laundry at High Park was rated from 1916 onwards.

*- Sean McDermott Street, Dublin (closed 1996)*

Searches were conducted of Valuation Office records from 1895 onwards. The Magdalen Laundry at Sean McDermott Street was exempt from 1895 to 1914. The Laundry was first rated in 1914 and continued to be rated from then on.

*- Donnybrook (closed 1992)*

Searches were carried out of all records from 1910 to the present. The Magdalen Laundry at Donnybrook was rated from 1910 onwards.

*- Peacock Lane, Cork (closed 1991)*

Searches were conducted of all records from 1908 onwards. The Magdalen Laundry at Peacock Lane was rated from 1908 onwards. (It was from 1970 onwards rated as a hostel).

*- St Mary's, Cork (closed 1977)*

Searches were conducted of Valuation Office records from 1910 onwards. The Magdalen Laundry at Sunday's Well was rated from 1910 until its closure.

59. Four Magdalen Laundries were exempt from rating prior to the establishment of the State, but were rated after establishment of the State, as follows:

*- St Mary's, Waterford (closed 1982)*

Searches were conducted of Valuation Office records from 1927 onwards. The Magdalen Laundry in Waterford appears to have been exempt from rates prior to the establishment of the State, but was rated from 1927 onwards.

*- Magdalen Home, Galway (closed 1984)*

Searches were conducted of all Valuation Office records from 1899 onwards. These records indicated that the Magdalen Laundry in Galway was exempt from rates from 1899 to 1947. The Laundry was rated for the first time in 1947.

*- St Mary's, Limerick (closed 1982)*

Searches were conducted of Valuation Office records from 1900 onwards. The Magdalen Laundry in Limerick was exempt from rates from 1900 to 1948. The Laundry was first rated in 1948 and continued to be rated consistently thereafter.

*- St Patrick's Refuge, Dun Laoghaire (closed 1963).*

Searches were conducted of all Valuation Office records from 1915 to 1963. These records indicated that the Magdalen Laundry in Dun Laoghaire was exempt from rates from 1915 to 1952. The Laundry was rated for the first time in 1952 and from then until its closure.

60. And finally, one Magdalen Laundry was not rated either before or after establishment of the State:

*- St Mary's, New Ross (closed 1967)*

Searches were conducted of Valuation Office records from 1910 to 1969. The records do not identify a Laundry, but rather only the Convent. There was accordingly no rating for the laundry premises.

*Rates on the Good Shepherd Convent, Waterford*

61. In the case of the Good Shepherd Convent, Waterford, information is available on the circumstances around this revision of rating. This Convent, including the Magdalen Laundry, was until 1925 exempt from rates. In 1926, Waterford City Council sought to apply rates to the institution. The rateable valuation applied to the "Laundry, yard, Drying room" appears to

have been £100.<sup>32</sup> That valuation remained on the relevant rate books until 1970.

62. This decision by Waterford City Council was appealed by the Good Shepherd Sisters first to the Circuit and then to the High Court.
63. The High Court in 1930 upheld the decision of the Circuit Court finding that, while the Industrial School and the “Magdalen Asylum” were exempt from rates, the Convent building, “the laundry” and land attached to the Magdalen Asylum and Industrial School were not exempt from rates.<sup>33</sup> (In this context, the reference to the “Magdalen Asylum” as opposed to the “laundry” presumably applies to the living quarters of the women who worked in the Laundry.)
64. Spot-checks of the Waterford City Archives demonstrate that the rates which arose for the Good Shepherd Convent due to this decision were paid annually.
65. However, the manner in which the Good Shepherd Convent was viewed by Waterford City Council appears to have been somewhat inconsistent or to have altered in later years. A Manager’s Order dating 18 August 1954 was identified by the Waterford City Archivist, which includes the Good Shepherd Convent as one of 9 named institutions in the City exempted from the payment of metered water charges “as they are maintained mainly for charitable purposes”.<sup>34</sup> Arrears as of that date were ordered to be written off.<sup>35</sup>

### **C. Social Insurance**

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<sup>32</sup> Rate books for South Ward, Waterford, Ref Fin7/3/passim

<sup>33</sup> Commissioner for Valuations v Good Shepherd Convent

<sup>34</sup> Waterford City Manager’s Order 18 August 1954

<sup>35</sup> Ref TNC16/8

*Introduction*

66. The question of the employment status, in particular whether work in the Magdalen Laundries qualified as insurable employment and whether insurance contributions were made on behalf of the women working there was also considered by the Committee.
67. In addressing this question, the Committee first reviewed the historic legislative provisions, in order to determine what tests applied for any person to be considered to be in insurable employment. The application of these tests to the women who worked in the Magdalen Laundries would establish whether or not they were in insurable employment. If they were in such employment, there would have been a requirement for the Congregations to make insurance contributions on their behalf.
68. The Department which now holds responsibility for this area is the Department of Social Protection. Although the Department offered full cooperation to the Committee, establishment of the status of the women who worked in the Magdalen Laundries, as well as whether or not contributions were made on behalf of these women was not straightforward. This is the case as most records held by the Department for employed persons are organised on the basis of Personal Public Services Numbers (formerly “Revenue and Social Insurance (RSI)”) rather than by employer; and as some historic records have been destroyed (set out in further detail below).
69. Despite these challenges, the Department carried out searches of available records and assisted the Committee in its work. The Committee has on that basis identified a certain number of relevant records relating to the employment status of the women working in the Magdalen Laundries, and the implications of that status in relation to social insurance. This Section sets out the findings of the Committee in this regard.

*i. Legislative tests for insurable employment*

70. The first compulsory social insurance scheme in Britain and Ireland was brought into effect, prior to establishment of the State, by the National Insurance Act 1911. Under the terms of the Act, unemployment and sickness benefit schemes were established and insurance was made compulsory for persons over 16 years of age who were either:

- manual workers employed under a contract of service, whatever their rate of remuneration; or
- non-manual workers whose remuneration did not exceed a specified limit (£160 per year).<sup>36</sup>

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<sup>36</sup> National Insurance Act 1911 Section 1 (extract):

“(1) Subject to the provisions of this Act, all persons insured of the age of sixteen and upwards who are employed within the meaning of this Part of this Act shall be, and any such persons who are not so employed but who possess the qualifications herein-after mentioned may be, insured in manner provided in this Part of this Act, and all persons so insured (in this Act called “insured persons”) shall be entitled in the manner and subject to the conditions provided in this Act to the benefits in respect of health insurance and prevention of sickness conferred by this Part of this Act.

(2) The persons employed within the meaning of this Part of this Act (in this Act referred to as “employed contributors”) shall include all persons of either sex, whether British subjects or not, who are engaged in any of the employments specified in Part I. of the First Schedule to this Act, not being employments specified in Part II of that Schedule”.

First Schedule, Part I, Employments within the meaning of Part I of this Act relating to Health Insurance (extract):

“(a) Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise, or, except in the case of a contract of apprenticeship, without any money payment”.

Part II Exceptions (extract):

“(g) Employment otherwise than by way of manual labour and at a rate of remuneration exceeding in value one hundred and sixty pounds a year, or in cases where such employment involves part-time service only, at a rate of remuneration which in the opinion of the Insurance Commissioners, is equivalent to a rate of remuneration exceeding one hundred and sixty pounds a year for whole-time service”.

71. In 1920, again prior to the establishment of the State, these provisions were extended to include certain other categories (including persons in paid apprenticeships) and new rates of contribution and benefit, differentiating between men and women, boys and girls were introduced.
72. After its creation in 1947, the Department of Social Welfare became responsible for coordination and administration of the social welfare schemes already in operation. The need for reform was considered and, in 1949, a White Paper was issued concerning Social Security.<sup>37</sup>
73. In summary, the White Paper proposed that social insurance be extended to cover the entire employee class. Some, but not all, of the recommendations of the White Paper were implemented over subsequent years.
74. The key piece of legislation for the purposes of this Report was the Social Welfare (Insurance) Act 1952. With effect from January 1953, it provided for a single social insurance scheme, replacing the previous separate schemes for unemployment, widow's and orphan's pensions and national health.
75. The 1952 Act provided as follows in relation to insured persons:

“Subject to the provisions of this Act

- a) every person who on or after the appointed day, being over the age of sixteen years and under pensionable age, is employed in any of the employments specified in Part I of the First Schedule to this Act, not being an employment specified in Part II of that Schedule, shall be an employed contributor for the purposes of this Act”.<sup>38</sup>

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<sup>37</sup> White Paper on Social Security, October 1949

<sup>38</sup> Social Welfare Act 1952, Section 4(1)

76. The First Schedule sets out in some detail the employments which qualified, including the following:

“Employment in the State under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise, or without any money payment”.<sup>39</sup>

77. It also set out the employments which were excluded from social insurance, including, among other categories:

- Employment at a rate of remuneration exceeding in value six hundred pounds a year, (or pro rata in the case of part-time employment); or
- “Employment specified in regulations as being of inconsiderable extent”.

78. The Act also provided that these excluded types of employment could, by Ministerial Regulation, be brought within the scope of “employed contributors”<sup>40</sup> or that other “classes of employment” could be added.<sup>41</sup>

79. As permitted by the 1952 Act, certain other employments were excluded from insurability by Regulation. One such Order was made in 1952, excluding:

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<sup>39</sup> First Schedule to the 1952 Act, section 1. A number of specific employments are also mentioned, although none relevant to this Report.

<sup>40</sup> Section 4(4) of the 1952 Act

<sup>41</sup> Section 4(5) of the 1952 Act

"Employment where the employed person is a person in Holy Orders or other Minister of Religion or a person living in a religious community as a member thereof".<sup>42</sup>

80. Employment of "inconsiderable extent", which was excluded from insurability by the 1952 Act, is important in the context of this Report. A Statutory Instrument was made by the Minister in 1953 which specified that employment of this type would be defined by reference to a minimum income threshold. It provided that employment of inconsiderable extent consisted of:

"employment, other than employment under a contract of apprenticeship, in any one or more employments (which apart from these Regulations would be insurable) from which employment or employments the earnings of the employed person are less in value than 30 shillings a week".<sup>43</sup>

81. However, a further Statutory Instrument made that year revoked these regulations and with effect from 31 August 1953, specified that employment of inconsiderable extent would be defined as:

"Employment (other than employment which is under a contract of service and is for the purpose of the employer's trade or business), in any one or more employments (which apart from these Regulations would be insurable) for less than eighteen hours in a contribution week where the employed person is not mainly dependent for his livelihood on the remuneration received for such employment or employments".<sup>44</sup>

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<sup>42</sup> Article 8, Social Welfare (Insurance Inclusions and Exclusions) Regulations, S.I. 373 of 1952

<sup>43</sup> Article 2, Social Welfare (Employment of Inconsiderable extent) Regulations 1953, S.I. 20 of 1953

<sup>44</sup> Social Welfare (Employment of Inconsiderable Extent)(No.2)(Regulations) 1953, S.I. 290 of 1953

82. These regulations remained in force until 1979, when a further Order was made revoking them and providing that, with effect from April 1979, employment of inconsiderable extent consisted of either:

“(a) Employment (which apart from these Regulations would be insurable) in one or more employments ... for less than eighteen hours in a contribution week where the employed person is not mainly dependent for his livelihood on the remuneration received for such employment or employments”

Or

“(b) Employment (which apart from these Regulations would be insurable) in respect of which the rate of remuneration of the employed person does not exceed a rate equivalent to a rate of £6 a week, or £26 a month, where the person has no other employment”.<sup>45</sup>

83. The above means that – between 1953 and 1979 - the exclusion from insurability of employment of ‘inconsiderable extent’ applied only to employment of less than 18 hours a week, without any minimum income threshold; and it was only after 1979 that a minimum income threshold also applied as a test for employment of ‘inconsiderable extent’.

84. In terms of primary legislation, it can also be noted that the Social Welfare Act 1973 abolished the income threshold which applied in the case of non-manual workers with effect from April 1974. The practical effect of this was that the number of people covered by social insurance increased significantly – the Department of Social Protection has informed the Committee that from 1973 to 1975, the number of insured persons increased by almost 19%.<sup>46</sup>

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<sup>45</sup> Social Welfare (Employment of Inconsiderable Extent) Regulations 1979, SI 136 of 1979

<sup>46</sup> Letter dated 26 November 2012, Department of Social Protection to the Inter-Departmental Committee

85. Although relating to more recent decades only, it can also be noted that the Social Welfare (Amendment) Act 1978 provided that social insurance contributions would be levied as a percentage of earnings up to a specified ceiling and would be collected by the Revenue Commissioners rather than by the Department of Social Welfare. The new system came into effect on 6<sup>th</sup> April 1979.
86. The system for the making of social insurance contributions has also been adjusted over time. Prior to 1979, social insurance contributions were recorded for individual employees against their PRSI number - employers purchased stamps for their employees and recorded them on cards, which were forwarded each year to the Department. The details on these cards were then recorded on the Register Sheet maintained for each person by the Department.<sup>47</sup>
87. The Department indicated to the Committee that, since 1979, contributions to the Social Insurance Fund:
- “are collected in the main by the Revenue Commissioners together with income tax due. All employers must make tax/PRSI returns to the Revenue Commissioners which then compile the data and send it to the Department”.<sup>48</sup>
- ii. *Application of these tests to the women working in the Magdalen Laundries*
88. The Committee sought to identify any records which might demonstrate what contemporaneous assessment, if any, the authorities made of the status of the work carried out by women admitted to the Magdalen Laundries during their operation.

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<sup>47</sup> Letter dated 26 November 2012, Department of Social Protection to the Inter-Departmental Committee

<sup>48</sup> Id

89. As set out above, targeted searches of the case-files of the Department of Social Protection are not possible without certain key information – in particular PPS (previously RSI) numbers. Nonetheless, a number of searches were carried out.
90. Generalised searches previously carried out by the Department did not identify returns from the Magdalen Laundries.<sup>49</sup> At the request of the Committee, the Department searched for any files relating to employment by each of the 4 Religious Congregations which operated the Magdalen Laundries. These searches did not result in the identification of any relevant records.
91. The Department also searched for any general files relating to the 1952 and 1953 Statutory Instruments specified above, as it was considered that such general files might provide further insight into included and excluded categories of employment. It was not possible for the Department to identify any of these files.
92. However, the Committee identified a letter in searches of non-state archives, issued in 1969 by the Department of Social Welfare to a woman who was at that time working in a Magdalen Laundry. A separate letter was also sent by the Department to the Reverend Mother of the Religious Congregation which operated that laundry.
93. The letter was issued in response to an enquiry as to whether the named woman, who had been admitted to and was working in the Magdalen Laundry, was in insurable employment. The Department's letter to the Religious Congregation said as follows:

“I am directed by the Social Welfare to refer to the question whether, since [date of admission] 1968, [name] is employed by you in

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<sup>49</sup> Searches carried out in 2010 in the context of research by the Department prior to the answering of PQ5868/10 of 4 February 2010

employment which is insurable under the Social Welfare Acts and to inform you that in the light of the information obtained it has been decided by a Deciding Officer that she is not so employed".<sup>50</sup>

A copy of the letter is included in the Appendices.

94. From the records of the relevant Religious Congregation and those of the Department of Education and Skills, the Committee determined that the person in question was at the time a 17-year old girl. She had no known family and had been raised in a named Industrial School. It appears that she had been released on licence from the Industrial School at the age of 15 and worked for 2 years as a housekeeper for a named person. The Register of the Magdalen Laundry alleges that she stole an item from that named (private) employer. Based on the records of the Department of Education and Skills, it appears she was recalled to her former Industrial School and agreed with the Manager of that School to enter the Magdalen Laundry in Limerick for a period. The Register of the Magdalen Laundry confirms that she was referred there by that Industrial School to the Magdalen Laundry. She had been in the Magdalen Laundry approximately 5 months when the above insurability decision was taken. She remained there a little more than 1 additional year before leaving for a named job.
95. The Committee requested the relevant underlying file (IE 1873/68) for this case from the Department of Social Protection, in order to review the information on which the then Department of Social Welfare based its decision that the woman was not in insurable employment.
96. The Department of Social Protection carried out searches for the file in question. However the Department, on foot of these searches, determined that:

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<sup>50</sup> Letter dated 12 February 1969, Department of Social Welfare to Good Shepherd Convent, Limerick, Ref IE 1873/68

“files in the IE series up to 1970 were destroyed by Facilities Management when the Department vacated its offices in Townsend Street”.<sup>51</sup>

As the file in question dates to 1969, it is highly likely that it was also destroyed at that time.

97. Searches were also carried out for any other Departmental records relating to this person. The Department confirmed to the Committee that paid contributions were made in relation to this person, for specified dates in 1968, with her occupation recorded as “housework”. These details correspond with the records of the Department of Education and Skills, insofar as they identify her employment as a domestic prior to her entrance to a Magdalen Laundry.
98. A smaller number of contributions were also recorded (again in the category ‘housework’) corresponding to the period after her departure from the Magdalen Laundry.
99. The same record sheet also has a note as follows:

“IE 1873/68 emp at Good Shep Conv wk fr 10/9/68 is not insurable, Dec 7/2/69”.<sup>52</sup>
100. The Department’s records also detail that the person in question claimed dental benefit on a specified date, which fell during her time in the Magdalen Laundry.
101. These records confirm the information identified by the Committee in the relevant non-State archive, namely that the Department of Social Welfare,

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<sup>51</sup> Department of Social Protection letter dated 4 January 2012 to the Inter-Departmental Committee

<sup>52</sup> Letter dated 15 January 2012 Department of Social Protection to Inter-Departmental Committee

in 1969, considered the issue and determined that a woman working in a Magdalen Laundry was not in insurable employment.

102. That much is clear, but in light of the fact that the case-file (IE1873/68) was not available, it is not possible for the Committee to state definitively on what basis it was decided by the Department that the woman was not in insurable employment during her time in a Magdalen Laundry.

103. The decision can only have been made, however, on the existing legislative tests. The Committee therefore considered the various possible explanations for this decision.

- First, as there was no general income threshold for insurable employment until 1979, this decision, taken in 1969, could not have been based on the fact that the woman was not paid.
- Further, as she was 17 years of age when admitted to the Magdalen Laundry, the decision could not have been based on her being under the age of 16 or over the pensionable age.
- Third, it is also unlikely that the young woman was considered by the Department to be in employment of inconsiderable extent (i.e. for 18 hours or less a week and not dependent for her livelihood on the remuneration received), given that the working week in the Magdalen Laundries exceeded the threshold of 18 hours a week.

104. The only legislative bases, therefore, which remain and which this decision could have been based on were the following possible grounds:

- That the woman was not considered by the Department to be employed “under any contract of service... written or oral, whether expressed or implied”; or

- That the woman was considered by the Department to be “living in a religious community as a member thereof”.

105. The Department of Social Protection has indicated to the Committee that the assessments set out in the preceding paragraphs are correct, and considered that the first of these two options, namely that it was not considered that the woman was employed under a contract of service, is the most likely basis for the decision.

106. The position following 1979 is somewhat clearer. As set out above, the Social Welfare (Employment of Inconsiderable Extent) Regulations 1979, established a minimum income threshold for insurable employment. From that point onwards, employment, which otherwise would qualify as insurable, was excluded from insurability if it was of “inconsiderable extent”, one of the tests for which was that the employee earned less than £6 a week, or £26 a month.<sup>53</sup>

107. Accordingly, after 1979, it is likely that the women working in the Magdalen Laundries did not qualify as being in insurable employment, as they would not have been in receipt of payment of greater than the threshold amount of £6 per week.

*iii. Redundancy payments or rebate claims*

108. The Committee also identified and examined a small number of files relating to redundancy payments or rebate claims.

109. It can first be noted that an employer who makes a redundancy payment to a redundant employee is entitled, subject to certain conditions, to claim a rebate from the State of up to 60% of the statutory payment made. For rebate purposes, years of reckonable service were required to be fully insurable employment and the redundant employees were required to be over 15 and under retirement age.

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<sup>53</sup> SI 136 of 1979

110. This scheme, now operated by the Department of Social Protection, was at the time material to this Report operated by the Department of Labour. The process involved was for an employer, in making a claim, to state the number of years of reckonable service of the redundant employee or employees in relation to which the claim was made.
111. The Committee therefore examined the small number of files identified in the archives of the Department of Enterprise, Jobs and Innovation (successor to the Department of Labour) concerning redundancy payments or rebate claims from Magdalen Laundries or former Magdalen Laundries.
112. In two cases (Peacock Lane and Donnybrook Magdalen Laundries), the rebate claims related to male (non-resident) employees of the Religious Sisters of Charity.<sup>54</sup> These are not of relevance to the question of the employment status of the women who were admitted to and worked in the Magdalen Laundries and are not detailed here.
113. A file was also identified in relation to redundancy rebate claims submitted by a private limited company which operated a laundry business from the premises of a former Magdalen Laundry, after purchasing it as a going concern from the Congregation which had previously operated it.<sup>55</sup>
114. These claims were submitted by the private company in the years after the closure of the Magdalen Laundry. However, two of the claims related to female employees of the new owners who had, in earlier years, been admitted to and worked in the Magdalen Laundry. The handling of these claims is therefore of interest in the context of this Report.

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<sup>54</sup> Redundancy Rebate claims from the Sisters of Charity, Peacock Lane Laundry, St Mary's Road, Cork, File Ref 91/46805; and Redundancy Rebate claim from the Sisters of Charity Laundry, Donnybrook, Dublin 4, File Ref 93/51387

<sup>55</sup> File Ref 90/40384

115. In the case in question, one rebate claim was made in 1990 for a female employee of the new owners. The file indicates that she was employed from February 1977 to October 1990, that is, 5 years during which the Laundry was operated by the Congregation and 8 years while it was owned and operated by the private company, which employed her. The claim form submitted by the private company states that the years of employment for this woman (which also constituted the period for which the employer had paid statutory redundancy) were 13, that is, including her years working in the Laundry during the time it was operated by the Congregation prior to its sale.<sup>56</sup>
116. The file confirms that the Department accepted the full period of 13 years as reckonable years and paid a rebate based on that full period. However, the file contains no information that would suggest that the status of the woman's employment was known or taken into consideration by the Department of Labour when making this decision. It would appear that the rebate was based solely on a calculation of the woman's total years of service, based on the dates of employment as recorded in the rebate claim.
117. A further rebate claim was made by the same company in 1994 in relation to 8 male and female employees.<sup>57</sup> Seven of these had been employed after the sale of the Laundry premises by the Congregation and are therefore not relevant to this Report. One female employee is indicated by the relevant rebate claim to have worked in the Laundry from November 1974 until November 1993, that is, 8 years while the Laundry was operated by the Congregation and 11 years after its sale to and operation by its new owners. The handling of her case is therefore relevant to this Report.
118. As in the earlier claim, the years during which this woman worked in the Laundry when it was operated by the Congregation were included in the claim form submitted to the Department and in relation to which the

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<sup>56</sup> Id

<sup>57</sup> File Ref 94/40384

employer had paid statutory redundancy.<sup>58</sup> Again, the Department accepted the full period, as reflected in the claim, as reckonable service. Again, the Department paid the employer a rebate based on the full period of reckonable years included in his claim. However and similar to the earlier case, there is no record on file to suggest that the Department of Labour was aware of or considered the status of the woman's employment prior to the private company purchasing the Laundry. Rather, it includes only a simple calculation of the woman's years of service, based on the rebate claim submitted.

119. A rebate was refused in respect of one other woman, who had worked in the same Laundry both before and after the time of its sale by the Congregation. The rebate was refused on the grounds that she was above the age of retirement at the time of her redundancy. The file demonstrates some confusion with respect to her age, due to the fact that she had neither a birth nor a baptismal certificate. Although the matter was appealed to the Employment Appeals Tribunal, a rebate was not granted in her case.<sup>59</sup> This decision was not based on any consideration of her employment status, which was not analysed or considered, but rather only on the grounds of her age.
120. These decisions of the Department of Labour would appear, on their face, to be in conflict with the decision of the Department of Social Welfare noted above, as follows:
- A formal determination was made in 1969 by the Department of Social Welfare (set out above) that a woman admitted to and working in a Magdalen Laundry was *not* in insurable employment;
- while
- In the Department of Labour (redundancy rebate) cases, the Department accepted as reckonable service the periods in which two

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<sup>58</sup> Id

<sup>59</sup> Id

women worked in a Magdalen Laundry as well as their time as employees of the private company which purchased that Magdalen Laundry from the Congregation.

121. However, the decisions of the Department of Labour in the redundancy rebate cases were based solely on the rebate claim submitted and the dates indicated thereon for the period of employment of the women (which included their previous work in the Laundry under its previous operators, the Congregation). There is no indication on the Department of Labour file that the Department was aware of this point. Nor is there any indication that the Department was aware of the Department of Social Welfare determination on the insurability of employment in Magdalen Laundries, or, further, that it had reason to consult with the Department of Social Welfare on these cases. Rather and as noted above, the file demonstrates that these decisions of the Department of Labour were based solely on the rebate claim submitted by the employer, and the dates for the woman's period of employment indicated thereon, which were accepted at face value.

122. It appears therefore that the only formal consideration of the insurability or otherwise of the women who worked in the Magdalen Laundry took place in the social welfare case detailed above.

123. The Committee notes, finally, that the private company which lodged the redundancy rebate claims with the Department of Labour did so in good faith and had made redundancy payments based on what they understood to be the full period of service of the redundant employees of the Laundry, that is, including the period for which they worked in the Laundry while it was operated by the Religious Congregation.