

SCORR-0079-2024 – May 2024

SCORR-0079-2024

NIAO Draft Report – Public bodies’ response to misrepresented soil sample analysis

BACKGROUND

1. Seamus Wade, Director of the Northern Ireland Audit Office (NIAO), wrote to you on 26 April 2024 advising that the NIAO had conducted a review of public bodies’ handling of the misrepresented soil samples issue. The draft report has now been prepared and the NIAO has advised that it wishes to publish in June this year and lay before the NI Assembly. In line with normal protocol, the NIAO has asked that the Department review the draft report and confirm by 24 May if it is satisfied that it is factually accurate. In advance of this, the Department of Finance (DoF), in its role as Treasury Officer of Accounts, has suggested a meeting with NIAO and this Department to discuss the soil sample issue and the implications of the draft report in more detail, particularly focussing on how the report will be handled given the recommendations relate to local and central government (the former having no formal accountability to the PAC and so learning from the similar difficulties relating to the NIAO report on planning in 2022). This has been arranged for 24 May 2024. We will update you after that meeting.
2. You are aware of the issue of misrepresented soil samples through a previous SCORR-0465-2023 following correspondence from Peter McReynolds MLA which included an earlier submission to Julie Harrison from February 2023 (SUB-0031-2023). The response to Mr McReynolds is attached below as an annex for ease of reference. This issue has been the subject of ongoing media interest including requests for information from ‘The Detail’ (and a specific EIR request from journalist Luke Butterly of the Detail), matters were

subsequently reported in the Belfast Telegraph.

3. Early appraisal of the draft report demonstrates NIAO's misapprehension that DfI should take on responsibility for addressing allegations of fraud in local government planning. It is worth noting that the issue of misrepresented soil sample reports/analysis impacts on a range of government functions, both central and local; these include applications for environmental permits and licenses, applications for government funding under the Farm Business Improvement Scheme (FBIS), potential future funding under the new DAERA funded £45 million Soil Nutrient Health Scheme (SNHS), as well as applications for planning permission submitted to local government.
4. We understand that the draft report has also been copied to NIEA and local government. Recent contact with colleagues in NIEA has confirmed that the report was also sent on Friday 26 April 2024 to both Katrina Godfrey, DAERA Permanent Secretary, and David Reid, Chief Executive of NIEA, for their comment. It is unclear, however, as to which specific elements of the report DAERA and NIEA have been asked to comment by NIAO.
5. In line with ongoing co-ordination between DfI and DAERA/NIEA on this issue, there is engagement between officials to clarify the approach to be adopted in responding to the NIAO and the detail on areas to which each department will respond. It is noticeable that despite the potential fraud impacting local government that there appears to have been no engagement by the NIAO with the Department for Communities (DfC) as the central government department with oversight of local government.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. A draft interim response to Seamus Wade, advising that the Department will provide its substantive response following the meeting of 24 May [REDACTED] [REDACTED] is attached for consideration. Officials will nonetheless continue with a review of the draft report and initial completion of the Annex provided by the NIAO. A substantive response would then be drafted for your consideration following the upcoming meeting [REDACTED]

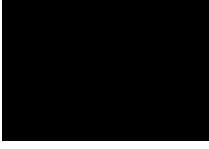
Drafted by: Brian Gorman, 14 May 2024 [REDACTED]

Cleared by Head of Division: Kathryn McFerran, 16 May 2024 and [REDACTED]

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DfI Press Office
PS/Secretaries to the above

Annex



|

SCORR-0079-2024 – Letter 6 June 2024

From the Permanent Secretary
Dr Denis McMahon



Your Reference:

Our Reference: SCORR-0079-2024

Mr. Seamus Wade
Director
Northern Ireland Audit Office
106 University Street
Belfast
BT7 1EU

3rd Floor, James House,
2-4- Cromac Avenue, The Gasworks,
Belfast, BT7 2JA
Telephone [REDACTED]
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6 June 2024

Dear Seamus

**NIAO DRAFT REPORT – PUBLIC BODIES’ RESPONSE TO
MISREPRESENTED SOIL SAMPLE ANALYSIS**

Thank you for the opportunity to consider and comment on the accuracy and completeness of the above draft report. As Accounting Officer, I welcome this report and am keen to ensure that it is both factually accurate and provides a clear and balanced understanding of the issues raised.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Training on fraud and co-ordination of fraud investigations, whether for planning or other areas, is a matter for the councils, not the Department. They may, of course, and should be encouraged to collaborate in doing so. Given the RPA transfer of 2015, however, it would not be appropriate for central government to have a different role for planning fraud than it does for other fraud in other areas. Indeed, such a recommendation if made, would risk diluting the accountability of councils and causing confusion in roles and responsibilities.

[Redacted]

[Redacted]

In closing, I can assure you that the Department continues to play a co-ordinating role in this matter, appropriate to its remit and powers, while respecting the statutory roles and responsibilities of the different organisations involved.

I trust you find this information helpful, and I look forward to your response and an updated report for comment.

Yours sincerely

Dfl Permanent Secretary

CC : Katrina Godfrey, DAERA Permanent Secretary
David Reid, NIEA Chief Executive

NIAO to DFI Letter – 25 June 2024



Seamus Wade
Director

Dr Denis McMahon
Permanent Secretary
Department for
Infrastructure Clarence
Court
10-18
Adelaide
Street Belfast
BT2 8GB

25 June 2024

Dear Denis,

NIAO Draft Report – Public bodies' response to misrepresented soil sample analysis

We note that you have had the chance to review the draft report sent to you on 26 April 2024 and would like to thank you for your comments and suggested amends. We have considered these and updated the draft report to incorporate same as deemed appropriate.

Please find attached latest version of the draft report together with our responses to your suggested amends and comments.

The draft report is now with the printers, and it is our intention to publish on Friday 5 July 2024.

I would be grateful if you would review the updated draft report and confirm that it is factually accurate no later than close of play on Monday 1 July 2024. If we do not receive any further comments by this date, we will deem you are content with its factual accuracy.

If you require any further information, please do not hesitate to contact [REDACTED] [REDACTED] Audit Manager, or me.

Yours sincerely,

[Redacted]

[Redacted]

Seamus Wade

Director

Northern Ireland Audit Office

106 University Street, Belfast BT7 1EU • 028 9025 1000 • www.niauditoffice.gov.uk

[Redacted]

SCORR-0088-2024 – June 2024

SCORR-0088-2024

NIAO Final Draft Report – Public bodies’ response to misrepresented soil sample analysis

BACKGROUND

- 8. You are aware from previous briefings of the issue of misrepresented soil samples.
- 9. Seamus Wade, Director of the Northern Ireland Audit Office (NIAO), wrote to you on 25 June 2024 [REDACTED]

[REDACTED]

[REDACTED] NIAO is requesting your confirmation, before close of play Monday 1 July, that the report is factually correct and advises that if no further comments are received by that time that you are content with the report’s accuracy. For your information, NIAO has advised they have sent the report for printing with the aim of publishing on 5 July which do not align with the normal good practice timeframes for the consideration of NIAO draft reports (as per Treasury of Accounts advice).

[REDACTED] In your letter of 6 June, you welcomed NIAO’s commitment (at a meeting on 24 May 2024 between NIAO, Department of Finance and Dfl senior officials) to review the recommendations in the draft report and to differentiate between recommendations falling separately to central and local government. [REDACTED]

[REDACTED]

- 11. Through correspondence and engagement, Dfl has stressed the statutory roles and responsibilities falling to Dfl and local planning authorities (LPAs) under the two-tier planning system [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. Given the tight turnaround time to respond to NIAO prior to the intended publication date, officials have focussed on a number of key paragraphs and issues rather than providing a detailed analysis of the changes in the revised draft report at this stage. In particular, those recommendations which should properly fall to local government rather than DfI and which should be framed in such a way as to align with PAC accountability processes.

[REDACTED]

15. The Department is maintaining its ongoing oversight and co-ordination role on the soil sample report issue and officials are scheduled to meet with SOLACE representatives and NIEA colleagues on 3 July 2024. NIAO has confirmed that the second version of this draft report has also been shared with local government, DAERA and NIEA.

16. This issue remains the subject of ongoing media interest including recent FOI/EIR requests for information from journalist Luke Butterly of the Detail which has previously reported in the Belfast Telegraph.

[REDACTED]

18. A response to Seamus Wade is attached for consideration and includes suggested revisions to the wording of a number of recommendations in the draft report.

Drafted by: Brian Gorman, 27 June 2024 Ext No. [REDACTED]

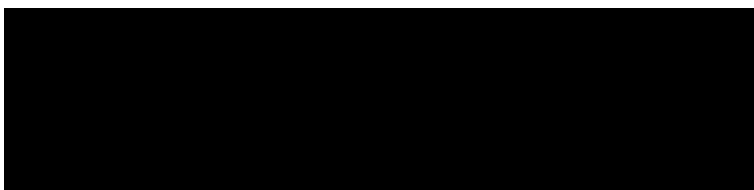
Cleared by Head of Division: Rosemary Daly, 28 June 2024 and Ext No. [REDACTED]

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DfI Press Office
PS/Secretaries to the above

Annex A - SCORR-0079-2024 – letter and associated attachments to NIAO – 6 June 2024



NIAO DRAFT REVISED REPORT – JUNE 2024

Internal Memo

From: Rosemary Daly
Regional Planning Governance and
Legislation

Your Ref:
Our Ref: SUB-1396-2024

Tel: [REDACTED]

Date: 28 June 2024

To: 1. Denis McMahon [**Agreed: 28/6/2024**]
Permanent Secretary

cc: Copy distribution below

2. John O’Dowd MLA
Minister for Infrastructure

PUBLIC BODIES’ RESPONSE TO MISREPRESENTED SOIL SAMPLE ANALYSIS – NIAO REPORT FOLLOWING CONCERNS RAISED

Decision Required

For Information Only

Issue:



To agree response to the Northern Ireland Audit Office on its Draft Report - Public Bodies’ Response to Misrepresented Soil Analysis.

Timescale:

1. IMMEDIATE (the NIAO has requested a response by 1 July 2024)

Presentational Issues:

This is an ongoing area of interest in the media and Press Office will continue to work with officials on lines to take when the NIAO report is published -G.O 28/6/24

FOI Implications:

This submission is likely to be fully disclosable.

Financial Implications:

There are no immediate financial implications, however the outworkings of any agreed recommendations from this report would need to be considered in terms of staffing resource impact. KM 28/06/24

Legislative Implications:

N/A.

Section 75 Implications:

N/A.

Executive Referral:

N/A.

Special Adviser

Comments:

Recommendation: That you note the proposed response from the Permanent Secretary to the Northern Ireland Audit Office, see **Annex 1**.

DETAIL

The attached briefing submission SCORR-0088-2024 (**Annex 2**) provides background detail in relation to DfI's review of the NIAO's final draft report '*Public Bodies' Response to Misrepresented Soil Analysis*' received on 25 June 2024. This is a follow on from SCORR-0079-2024 and associated response letter issued by the Permanent Secretary on 6 June 2024 (**Annex 3**)

- The NIAO has advised that the report is now with the printers and it is NIAO's intention to publish it report on 5 July 2024. Whilst there is no formal timetable in place for the clearance of NIAO reports with departments good practice has always been to have 4 weeks to review a first draft report, 2 weeks to review a second draft report before a final draft is issued. These timescales have clearly not been adhered to and have reduced our opportunity to fully consider the report and respond in the level of detail that we would have wished.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- In light of the tight turnaround time requested by NIAO the Permanent Secretary proposes to send the attached letter to NIAO.

RECOMMENDATION

- That you note the proposed response from the Permanent Secretary to the Northern Ireland Audit Office, see **Annex 1**.

Rosemary Daly
Director Regional Planning Governance and Legislation

Copy List:

Julie Thompson
Alistair Beggs
Scott Symington
Brian Gorman
Fiona McGrady
Siobhan Conlon
[REDACTED]
Aine Gaughran
[REDACTED]
Kerry Mack
DfI Press Office
PS To the Above

Letter - 1 July 2024

From the Permanent Secretary
Dr Denis McMahon



Your Reference:
Our Reference: SCORR-0088-2024

Seamus Wade
Director
Northern Ireland Audit Office
106 University Street
BELFAST
BT7 1EU

James House
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BELFAST
BT7 2JA
Telephone [REDACTED]
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1 July 2024

Dear Seamus,

NIAO FINAL DRAFT REPORT – PUBLIC BODIES’ RESPONSE TO MISREPRESENTED SOIL SAMPLE ANALYSIS

Thank you for the opportunity to consider and comment on whether the final draft report forwarded by your office on 25 June 2024 is factually correct. This response should be read in conjunction with my previous response of 6 June 2024, and it should be noted that comments made are only in relation to the role and statutory responsibilities of this Department.

I understand that good practice (for the review of draft NIAO reports) is to allow 4 weeks to review a first draft report and 2 weeks to review a second draft report; before a final draft is issued. Having such a tight timeframe, on this occasion, has reduced our ability to fully consider the factual accuracy of the report; and to respond in the level of detail that we would have wished.

[REDACTED]

A fundamental point in all of this, is that we recognise we have a key role in the leadership of the planning system. This role is centred on our responsibility for the policy framework. We want to use this role to assist in the delivery of outcomes, but this depends on all parts of the system fulfilling their own responsibilities in line with their own policies and procedures; particularly those responsibilities which require localised operational responses as envisaged in the two-tier system which was agreed by the Assembly.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

If the suggested changes can be made I would be in a better position to confirm the factual accuracy of those parts of the report that relate to this Department.

Yours sincerely

DR DENIS McMAHON

DfI Permanent Secretary

Annex A – [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Denis McMahon
Permanent Secretary
Department for Infrastructure
James House
2 - 4 Cromac Street
Belfast
BT7 2JA


02 July 2024


Dear Denis,

NIAO FINAL DRAFT REPORT- PUBLIC BODIES' RESPONSE TO MISREPRESENTED SOIL SAMPLE ANALYSIS

Thank you for your letter dated 1 July 2024 regarding the above matter.

I believe that NIAO has followed the DoF guidance on clearing reports as set out in Annex B of DAO 3/21, issued December 2023. An initial draft was issued for your consideration, followed by a meeting with your Team to discuss and a written response was received from you to which I replied in detail on a point-by-point basis. You have replied again and a final report will now be issued having given final consideration to all matters.

I considered carefully the issues raised at my meeting with your Team and our DoF colleagues on 24 May as well as the content of your written response of 6 June. 



[REDACTED]

In light of the above, can you now please advise whether you are in a position to confirm the factual accuracy of the report's findings?

As I noted in my previous correspondence, the C&AG and the Local Government Auditor propose to publish the report this week and I would therefore seek your response by return if at all possible.

Yours sincerely, [REDACTED]

[REDACTED]

Seamus Wade

Director

Northern Ireland Audit Office

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[REDACTED]

From the Permanent Secretary

Dr Denis McMahon

Your Reference:

Our Reference: SCORR-0089-2024

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3 July 2024

Dear Seamus,

NIAO FINAL DRAFT REPORT – PUBLIC BODIES’ RESPONSE TO MISREPRESENTED SOIL SAMPLE ANALYSIS

Thank you for your further letter of 2 July 2024 following our responses of 6 June 2024 and 1 July 2024 in relation to concerns regarding the current draft report which you have advised will be published on 5 July 2024.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While the points which have been made previously still stand, we are fully committed to working collaboratively on this issue with colleagues from the Northern Ireland Environment Agency (NIEA) and relevant local planning authorities. Specifically, to address the results of misrepresented soil sample analysis reports which have been submitted in support of planning applications.

Work is already in progress with respective bodies to move forward a collective approach on this issue. This work has been in train since NIEA first alerted us to their concerns in October 2022 and remains ongoing, through constructive discussion.

In closing, while I am unable to agree with parts of the report, I appreciate the opportunity to respond, and recognise the work that is involved in this process.

Yours sincerely, [REDACTED]

[REDACTED]

DR DENIS McMAHON

DfI Permanent Secretary

Circulation:

Katrina Godfrey – Permanent Secretary, DAERA
David Reid – Chief Executive, NIEA
Treasury of Accounts (DoF)

Dr Denis McMahon Permanent
Secretary Department for
Infrastructure James House
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04 July 2024

Dear Denis,

NIAO FINAL DRAFT REPORT- PUBLIC BODIES' RESPONSE MISREPRESENTED SOIL SAMPLE ANALYSIS

Thank you for your letter dated 3 July 2024 regarding the above matter.

I have kept the C&AG and the Local Government Auditor fully briefed on progress with the clearance of this report. [REDACTED]

DAO 3/21 makes it clear that the final decision regarding appropriate amendments to a draft NIAO public report lies with the C&AG. The C&AG is expected to take account of the views of her audited bodies in coming to this decision and she has done so in this case. [REDACTED]

[Redacted]

On the basis of the above, I wish to advise that NIAO will proceed to publish our report on 5 July 2024 as planned.

Finally, I welcome confirmation of your commitment to working collaboratively on this issue with colleagues from NIEA and relevant local planning authorities.

Many thanks to you and your Team for your contribution to the report.

Yours sincerely, [Redacted]

[Redacted]

Seamus Wade

Director