

From: Hutchinson, Peter
To: [Hepper, Fiona](#)
Cc: [McCutcheon, Joanne](#)
Bcc: [Hutchinson, Peter](#)
Subject: Audit of Ofgem - Legislative position
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Attachments: [image001.png](#)

Fiona,

I have reviewed the various pieces of legislation that relate to the powers of the NI Audit Authority in relation to auditing bodies such as Ofgem. As you will be aware, these issues have also been raised with the Departmental Solicitor's Office for comment and consideration.

My preliminary views on the legislation are as follows.

The Audit (Northern Ireland) Order 1987

Part III refers to "Economy, Efficiency and Effectiveness Examinations" and sets out the powers of the Comptroller and Auditor General in relation to the examination of Northern Ireland departments, bodies, etc. Paragraph 3 of Article 8 sets out the bodies that the Article applies to;

- a) Northern Ireland Departments
- b) Bodies whose accounts are open to NIAO due to Section 22 of the **Government Resources and Accounts Act (Northern Ireland) 2001**. Section 22 of the 2001 Act refers to the accounts of bodies that are not otherwise open to inspections and bodies that exercise functions of a public nature or is entirely / substantially funded from public money. In addition, a public sector body within the meaning of paragraph 7 as defined by a public sector authority or body if;
 - In case of a company the directors are appointed by a NI Department;
 - In the case of another body, the members (or majority) are appointed; and
 - In the case of an authority, the authority is so appointed.
- c) Any bodies whose accounts are required to be audited by NIAO by any other statutory provision.
- d) Any body that does not fall within Article 9 (other bodies mainly supported by public funds) whose accounts are open by virtue of any agreement between a NI Department and the said body.

From early consideration of this it would appear that elements a, b and c do not apply as Ofgem is not a NI Department, it's a not funded substantially from public money (it recovers costs through the licensed companies regulated) nor are the directors or members of the authority appointed by DETI and their accounts are not scheduled to be audited by NIAO by statutory provision. It would seem that this article might only apply if an agreement is reached between DETI and Ofgem. You will be aware that agreement has been reached in terms of collection and sharing of documentation however the physical right of access will not be ceded by Ofgem.

Paragraph 5 finishes saying "that Department shall, if so requested by the Comptroller and Auditor General, use its best endeavours to secure from the authority or body in question such rights as will enable examinations under this Article to be carried out in respect of that authority

or body.” We may need to consider whether if all our best endeavours have already been made? That being said Paragraph 7 would cast doubt on whether Ofgem can be classed as a public sector authority or body in the first place as DETI does not appoint any members to the body or authority.

Article 9 does not apply as it relates to bodies that have received more than half of its income from public funds – Ofgem is funded through the licensed energy companies.

The Audit and Accountability (Northern Ireland) Order 2003

Articles 3 and 4 deals with access to information for the purposes of audit or examination by NIAO as well as access to documents of thirds parties (restrictions and exclusions).

Relevant sections appear to be Article 3 paragraphs 3 (c) and (d) and paragraphs 4 (c) and (d), these relate to circumstances where relevant documents are held or controlled by either a person who has received financial assistance from the body by means of grant, loan, guarantee etc or by a person who at any time has supplied goods or services to the body in pursuance of a contract with the body. Paragraph 4 relates to the use of resources by the body in discharging its functions.

Paragraph 3 of Article 4 of the Order specifically refer back to these sections and sets out that authority is not granted to access documents held by or controlled by any Department or Minister of the Government of the United Kingdom. This would seem to suggest that the papers held by Ofgem through the DETI / Ofgem agreement (as per paragraphs 3 (d) and 4(d) of Article 4) could not be accessed because Ofgem is a Department of the UK Government (albeit a non-ministerial one). Paragraph 3 of Article also exempts bodies who accounts are audited by the NAO, this would see to preclude Ofgem also.

Observations

From my preliminary consideration of these pieces of legislation it does not appear that NIAO have a statutory right to enter Ofgem premises for purpose of audit and that the only method of securing this right would be through an agreement between DETI and Ofgem (as per Article 8 para 3 (d) of the 1987 Order. However this agreement could in fact be prohibited or rendered pointless by para 3 of Article 4 of the 2003 that precludes the access of documents held or controlled by UK Government Departments.

The issue certainly needs for consideration and we will need the view of DSO.

Finally, Ofgem has agreed to share all relevant information relating to applications and accredited installers under the scheme (including bank details demonstrating payments), they have also agreed to share relevant audit reports prepared by internal auditors (Deloitte) and by those undertaking site audits (AEA-Ricardo) – there may also be scope to input into Terms of Reference for audits or at the very least discuss pertinent issues before TORs are drafted. Additional site audits will be available at an extra cost to DETI if required. Finally the Ofgem accounts will be audited by NAO on an annual basis and if areas of concern are raised the NAO and Ofgem will seek to resolve.

Regards

Peter

Peter Hutchinson

Renewable Heat
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9532 (ext: 29532)
Textphone: 028 9052 9304
Web: www.detini.gov.uk

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