

1 May 2013

Landmark legal victory for ClientEarth

Supreme Court declares UK in breach of nitrogen dioxide legal limits and refers case to the Court of Justice of the European Union

Quotes

Simon Birkett, Founder and Director of Clean Air in London, said:

“Congratulations to ClientEarth on its landmark legal victory today. The team lead by James Thornton, Chief Executive, and Alan Andrews at ClientEarth and Dinah Rose QC and Emma Dixon at Blackstone Chambers have made environmental legal history today.

“The Supreme Court's formal declaration that nitrogen dioxide limit values have been breached in 16 of the UK's 43 zones, combined with the explicit statement that the way is open to immediate enforcement action at national or European level, will send shock waves through Government and others. The UK's top Court has sent a powerful message to the Government that it cannot continue to ride roughshod over air pollution laws.

“Further, the wide ranging proposed reference to the Court of Justice of the European Union means that this case could soon set the precedent for the most important aspects of air pollution laws across the whole of Europe i.e. what must be done by when if laws are breached and the penalties for not acting.

“The Government and the Mayor must wake up to this new reality and take action to protect the general public not lobby to weaken these laws during the ‘Year of Air’ in 2013.”

ENDS

Judgment

The Supreme Court allows the appeal to the extent that it grants a declaration that there has been a breach of article 13 of the Air Quality Directive. The proceedings are stayed whilst the other issues concerning the Air Quality Directive are referred to the Court of Justice of the European Union (“CJEU”). The parties are requested to file submissions as to the precise form of the questions to be referred. Lord Carnwath gives the only judgment.

Reasons for the Judgment

It is appropriate to grant a declaration that the UK is in breach of article 13. The fact that the breach has been conceded is not a sufficient reason to decline to grant such a declaration, where the breach is clearly established and there are no other discretionary bars to relief.

The proper interpretation of articles 22 and 23 of the Air Quality Directive raises difficult issues of EU law, the determination of which requires the guidance of the CJEU. Accordingly, the Supreme Court as the final national court is required to refer the matter to the CJEU.

The parties are invited to make submissions as to precise form of the questions to be referred to the CJEU. Subject to those submissions, the following questions appear to be appropriate:

- i. Where in a given zone or agglomeration conformity with the limit values for nitrogen dioxide cannot be achieved by the deadline of 1 January 2010 specified in annex XI of Directive 2008/50/EC (the Directive), is a Member State obliged pursuant to the Directive and/or article 4 of the Treaty on the European Union (TEU) to seek postponement of the deadline in accordance with article 22 of the Directive?
- ii. If so, in what circumstances (if any) may a Member State be relieved of that obligation?
- iii. If the answer to (i) is no, to what extent (if at all) are the obligations of a Member State which has failed to comply with article 13, and has not made an application under article 22, affected by article 23 (in particular its second paragraph)?
- iv. In the event of non-compliance with article 13, and in the absence of an application under article 22, what (if any) remedies must a national court provide as a matter of European law in order to comply with article 30 of the Directive and/or article 4 or 19 TEU?

Supreme Court media release (1 May 2013)

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2012_0179_PressSummary.pdf
[CAL 237 Supreme Court 010513 Press summary](#)

Supreme Court judgment (1 May 2013)

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2012_0179_Judgment.pdf
[CAL 237 Supreme Court judgment 010513](#)

ClientEarth media release (1 May 2013)

<http://www.clientearth.org/201305012170/news/press-releases/supreme-court-rules-uk-government-is-breaking-air-pollution-laws-2170>

Summary of legal status of UK zones and agglomerations with respect to nitrogen dioxide

[CAL 206 UK AQ Zones and AQ Updated draft 051012](#)

Quick guide to air pollution and the 'Year of Air'

<http://cleanairinlondon.org/news/quick-guide-to-air-pollution/>

15 January 2012

'Clean Air in London' lodges complaint over breaches of air pollution laws in London

<http://cleanairinlondon.org/legal/clean-air-in-london-lodges-complaint-over-breaches-of-air-pollution-laws-in-london/>

22 February 2012

Guide to legal issues: UK is cheating on air quality laws and misleading the European Commission

<http://cleanairinlondon.org/legal/guide-to-legal-issues-uk-is-cheating-on-air-quality-laws-and-misleading-the-european-commission/>

19 March 2012

Complaint to Commission

<http://cleanairinlondon.org/legal/call-for-caroline-selman-mp-to-resign-for-uk-misleading-european-commission/>

25 June 2012

Evidence to House of Commons Environment Food and Rural Affairs Committee

<http://cleanairinlondon.org/olympics/evidence-to-house-of-commons-environment-food-and-rural-affairs-committee/>

28 June 2012

London faces infringement

<http://cleanairinlondon.org/hot-topics/london-faces-infringement/>

28 September 2012

Four of nine UK zones have already breached nitrogen dioxide time extension

<http://cleanairinlondon.org/sources/four-of-nine-uk-zones-have-already-breached-nitrogen-dioxide-time-extension/>