

R (on the application of ClientEarth) v Secretary of State for Environment Food and Rural Affairs

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TFL Transport Emissions Roadmap Workshop

20 May 2015



Air Quality Plans

- The Ambient Air Quality Directive (2008/50/EC)
- Compliance deadline – 1 January 2010
- Extension possible to 1 January 2015 by preparing an Air Quality Plan
- UK Government responsible for compliance

The legal challenge

- Force government to prepare plans to reach compliance by 1 January 2015
- 16 areas, including London, West Midlands and West Yorkshire
- Role of UK courts in enforcement of EU law

The long road

- 2011 – High Court – loss for ClientEarth
- 2012 – Court of Appeal – loss for ClientEarth
- 2013 – Supreme Court – partial win and reference to CJEU
- 2014 – CJEU – dispute over who won
- 2015 – Supreme Court – ClientEarth win

What next?

- Government must prepare new Air Quality Plans by 31 December 2015
- Public consultation
- Definition of “as short as possible”

Implications for public bodies

- DEFRA to set out measures to reach compliance in as short a time as possible
- May involve duties on public bodies in relation to spatial planning and transport
- London requires ambitious solutions

Climate Change

- Climate Change Act 2008
- Imposes legally binding targets on UK as a whole
- Primarily CO₂
 - also: methane, N₂O and other GHGs
- Domestic transport ~ 25% of all CO₂ emissions

Thank you

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Appendix

Questions raised during the
presentation

Questions

What are the implications if Defra proposals are not good enough?

ClientEarth can request clarification from the Court on any legal issues which arise in the course of preparation of the plans. Once the plans are prepared, if they don't meet the requirements of the Directive this could be open to judicial review.

EU infringement proceedings

The UK is the only Member State to have received a letter of formal notice in relation to NO₂. The European Commission is likely to launch infringements against other Member States before issuing any Reasoned Opinion (the second stage of the procedure). Any case would then need to go through two sets of Court proceedings before any fine could be imposed, so fines are at least 6 years away. If the UK prepares a credible plan which demonstrates all measures are being taken to achieve compliance, it could avoid the risk of any such fine.

Where responsibility for the breach lies primarily with central government and a Local Authority has done everything it can to meet limit values it seems unlikely that Central Government could justify passing on any fine under the Localism Act. Local Authorities should push central government to give them the powers and resources they need in order to comply.

What are the implications to UK law if the UK leaves the EU?

EU Directives are transposed into UK Law. If the UK were to leave the EU it might decide to keep some of the rules and get rid of others. Some of this legislation would need to be unpicked from domestic rules, which could be a complicated task.