

DOE wins important European ruling on SEA

November 2011



On Thursday, 20th October 2011, the European Court of Justice gave an important preliminary ruling in favour of the Department of the Environment (DOE) making it lawful, in principle, for the DOE to consult with the Northern Ireland Environment Agency (NIEA) when preparing strategic environmental assessments of its own plans and programmes. This decision has been hailed by the Minister, Alex Attwood, as 'most reassuring' and it is hoped that it 'will assist the Department as it brings forward a range of plans in the future.'

It is a requirement of European law (EC Directive 2001/42/EC) that an environmental assessment is carried out on certain plans and programmes which are likely to have a significant effect on the environment. This process, known as Strategic Environmental Assessment (SEA), came under scrutiny in 2005 however when a judicial challenge was brought on the grounds that the NIEA, as an Agency of the DOE, could not give an independent assessment of draft Area Plans prepared by DOE Planning.

In its initial judgement in 2007, the High Court declared inter alia that the DOE cannot be the consultation body under the SEA Regulations when it is also the responsible body for the development plan or programme. In light of this decision, an appeal was subsequently lodged by the DOE and after careful consideration of the submissions, the Court of Appeal decided to seek clarification from the European Court of Justice.

The recent preliminary ruling of the European Court of Justice therefore marks an important culmination of what has been a long -running and significant issue and its judgment will now be forwarded to the Northern Ireland Court of Appeal to provide a final ruling on the matter.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.