

British Aggregates Association

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Briefing Note: BAA and the Aggregates Levy in NI

The British Aggregates Association (BAA) argued consistently against the Aggregates Levy since it was first suggested in 1998. As our arguments were disregarded we launched a legal challenge in the London High Court in 2002. The trial judge, Mr Justice Moses, found against us but gave us immediate leave to appeal which was unusual. We felt that due to the pressures of time, as our case was running alongside the introduction of the Levy, Moses J had not actually read part of our evidence relating to the illogicality of the Levy referred to as "Durward IV" and we lodged an appeal with the European Court of First Instance. This appeal has still to be finally determined but an interim judgment in December 2008 found in our favour and we anticipate a positive outcome in the near future.

Later on, we also lodged an objection at the EU against the derogation in Northern Ireland. Although we could well appreciate the need for such a move in NI with its open land border with the Republic, we had a number of reasons for this move. It was in flagrant disregard of EU competition law, it discriminated against mainland quarries exporting to NI and it could have been readily exploited to help NI quarries and precast concrete producers export high PSV chippings and concrete products to the mainland.

In January 2009 we were approached by the EU Court with regard to the organisation of an oral hearing in the NI case. We specifically asked the EU Court to postpone the hearing (and the Judgment) in the NI case until the main case had been dealt with. However this request was disregarded. The hearing went ahead in June 2009 and our successful challenge against the NI derogation was thereafter announced on 9 September 2010.

We understand full well this has the potential to cause obvious difficulties for NI operators but there are positive aspects. The previous Labour government had intimated that it was minded to devolve environmental taxation to Scotland, Northern Ireland and Wales and the loss of the derogation will help to concentrate political minds.

The Levy is most likely on its last legs anyway as we anticipate a similar positive outcome with our main case. The NI derogation was only ever a sticking plaster solution and had a limited time-span. For any proper environmental levy to have credibility it must be UK wide, with no exceptions and with the revenue used only for the benefit of the local community.