

Case Name: *Buick, Re Judicial Review* 2018 NICA 26 (6 July 2018)

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Commentary: Appeal against the successful challenge to the power of the Department of Infrastructure in Northern Ireland to grant planning permission for a major waste treatment centre and energy from waste incinerator on the basis that, in the absence of a Minister in charge, the Department did not have the power to grant the impugned permission. This decision is of critical importance to the conduct of government through the Northern Ireland Departments since no such Department has had a Minister in charge since 2 March 2017. The grant of the planning permission was a significant and controversial matter which again required determination by the Executive Committee. It would be contrary to the letter and spirit of the Agreement and the 1998 Act for such decisions to be made by departments in the absence of a Minister.

The role of civil servants is to advise Ministers and be accountable to them. The appellant's submissions would effectively turn civil servants into Ministers. Such a remarkable constitutional change would require the clearest wording and the Court did not consider that the Northern Ireland Budget Act 2018 provides any basis for the implication of such a major departure from established constitutional principles.

The Court considered whether there is any temporal limitation on the exercise of the limited powers available to departments in the absence of Ministers. Having regard to the scheme of the Act it can be argued that the exercise of such power should continue for so long as the Secretary of State is lawfully exercising judgement under section 32(3) (the requirement to propose a date for the poll for the election of the next Assembly) and for the period set by her for a poll. Proceedings have been initiated challenging whether the Secretary of State has unlawfully failed to act in accordance with her duty under section 32(3) of the 1998 Act so the Court expressed no view on that issue.

Case summary prepared by Town Legal LLP