

Briefing Sheet

Aviation and the Law

Aviation - above the law?

Aviation is virtually above the law. Certainly as far as noise and pollution are concerned. In fact, laws which apply to other areas of noise specifically exclude aviation. The Environmental Protection Act, 1990, and the Noise Act, 1996 do not apply to aviation.

No legal redress for residents

The Air Navigation Act set in 1920, and little changed since, prevents any litigation against the aviation industry for noise, pollution and damage. Many of the Heathrow landing and take-off routes are over 40 years old. Many residential areas have changed dramatically in that time. The fact that residents can't challenge these routes in law means there is no legal redress for the overflow. Flight paths can be altered, suspended or extended without the law requiring any consultation to take place with local authorities or residents who, for the first time, may find themselves under the flight path.

Civil Aviation Act 1982

Sections 76-82 of the Act are concerned with trespass by aircraft as well as aircraft noise and nuisance. Section 76 provides, inter alia, that the individual has no right of action in the courts against exposure to noise and vibration caused by aircraft in flight. Section 78 empowers the Secretary of State (for the Transport, Local Government and the Regions) to take actions to limit or mitigate the effect of aircraft noise and vibration connected with the taking off or landing of aircraft from designated airports. Section 80 empowers the Secretary of State to designate the airports to which he may apply aircraft noise and vibration controls under section 78. The Secretary of State has designated Heathrow Airport for aircraft noise and vibration controls under section 78. In the exercise of his powers under section 78, the Secretary of State applies to Heathrow a number of controls to limit or mitigate the effect of aircraft noise and vibration: maximum permitted noise levels for aircraft taking off, restrictions on night flying, noise insulation for the areas worst affected, noise preferential routes for aircraft taking off, and noise restriction procedures for aircraft landing and taking off.

Human Rights Act

The Human Rights Act 1998, which came into force fully in October 2000, incorporates the European Convention on Human Rights into UK law. The Act makes the rights that are guaranteed under the Convention enforceable in UK courts. The Act also recognises the European Court of Human Rights in Strasbourg as the final court of appeal from UK courts. The Convention rights include: respect for private and family life; prohibition of discrimination; prohibition of abuse of rights; protection of property; remedy where rights are violated. Section 3 of the Act provides that other legislation must be interpreted and given effect in a way that is compatible with the Convention rights. Section 6 makes it unlawful for public authorities to act in a way that is incompatible with a Convention right. Section 10 of the Act empowers the Government to amend provisions in other legislation that are incompatible with a Convention right.

Implications of Human Rights Act

The Human Rights Act has yet to be tested in the courts. But the Government may be vulnerable on a number of counts: night flights, depriving people of the right to a good night's sleep; its policy of concentrating flight paths, rather than dispersing them, and so discriminating against particular communities; its practice of extending flight paths without warning, where people's private and family life, and their property rights, have been violated through no fault of their own.