

# GreenSkies News

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Heathrow Airport - Night Flight Case Continues



## The UK Government Applies For The Right To Appeal Against Night Flights

In replying to a Parliamentary Question, Mr. Jamieson said that "The Hatton judgment raises serious questions about the interpretation and application of the European Convention on Human Rights. We are therefore submitting a request for the case to be referred for consideration by the Grand Chamber of the Court. The grounds for this request are set out in the letter to the Court."

In this letter the Government says that "States are required to minimise, as far as possible, the interference with (the applicants') rights, by trying to find alternative solutions and by generally seeking to achieve their aims in the least onerous way as regards human rights," and they claim that the Court departed from the approach adopted to date in cases under Article 8 where questions of social and economic policy arise in the context of a claim for environmental protection.

The Government argued that in previous cases the Court had always allowed the State a wide margin of appreciation recognising that it is not for the Commission or the Court to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this difficult social and technical sphere. However, in the Hatton case, the Government claims that the Court has allowed the United Kingdom either a very narrow margin of appreciation or none at all.

Judge Kerr, the only judge to express a dissenting opinion in the case, recognised that the decision in the present case represented a departure from earlier decisions: "The majority decision...relies on what appears to be a wholly new test for the application of Article 8...I am not aware of any other Convention case in which such a test has been applied. Indeed, it is difficult to see how it can be reconciled with the principle that states should have a margin of apprecia-

In our first Newsletter we carried news of the victory of eight residents living in the vicinity of Heathrow, who had successfully argued in the European Court of Human Rights that sleep disturbance caused by night flights was an infringement of Article 8 of the Convention. The UK Government has since announced that it will appeal. Given the importance of the decision to local airport communities, this Newsletter features the Government's announcement and its reasoning, the reaction of the press and environmental organisations, and details of the next stages of the appeal.

### The Government's Official Statement

In a press release dated 19 December 2001, the UK's Aviation Minister David Jamieson MP announced that the government would be applying to the Grand Chamber of the European Court of Human Rights for permission to appeal against the decision in the Hatton case on night flights (reported in the previous GreenSkies newsletter). The Hatton judgement was received on 2 October 2001, and the Government had three months to respond.

In its press release the Government stated that Heathrow has the strictest night noise regime of any major European airport, and that its decision to appeal did not mean any softening of its tough approach to night noise.

GreenSkies  
c/o AEF  
Sir John Lyon House  
5 High Timber Street  
London EC4V 3NS  
www.greenskies.org  
T. +44 (0)207 248 2223  
F. +44 (0)207 329 8160  
vanja@greenskies.org

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tion in devising measures to strike the proper balance between respect for Article 8 rights and the interests of the community as a whole.”

The UK Government also says that the Court appears to have held that because the United Kingdom did not (in the Court’s view) carry out a sufficient evaluation/study prior to introducing the 1993 scheme, the Government failed to strike the right balance between the interests of the applicants and the interests of the community as a whole. The Government disagrees with this statement, and claims that the Court itself failed to go on to balance the economic benefit to the general community of night flights against the complaints of the applicants regarding sleep disturbance, failing to carry out the exercise which alone would have enabled it to decide whether the balance struck by the Government was right or wrong. Therefore, the Government considers that serious questions have been raised regarding the interpretation and application of the Convention, and since the case is self-evidently one of great importance, it has decided to appeal.

### **The British Press**

The British press however, identified another explanation for the appeal. The Financial Times claimed the Government was appealing against the judgement “because taxpayers could face a bill of £2bn (\$2.9bn). Confidential documents obtained by the Financial Times showed that the Treasury had thrown its weight behind the Department for Transport, Local Government and Regions’ decision to appeal because of the ruling’s financial implications.

The department had calculated that between 100,000 and 500,000 other people living around Heathrow could potentially claim compensation as a result of the court’s ruling, depending on the level of noise used as qualifying criteria. This would result in a compensation bill between £400m and £2bn.

The government’s chances of succeeding on the merits of the appeal are 60-40 in its favour, according to a legal opinion sought by Mr Byers (the Transport Minister), said the Financial Times. Philip Havers, a senior lawyer, told the Financial Times that his assessment reflects “what we consider to be good evidence as to the economic benefits of night flying”.

Mr Havers says the European court “seriously undervalued” and “plainly ignored” evidence put before it on the economic benefit of night flights. He highlighted evidence from British Airways suggesting that night flights operated by airlines into Heathrow contribute about £1.3bn in gross domestic product and support 11,000 jobs.

Mr Byers in November said he would consult on

stricter controls on night flights by the end of 2003. There are about 15 flights in and out of Heathrow between 11.30pm and 6am.

Mr Havers said changes to restrict night flights could undermine the government’s appeal against the European court’s ruling.

### **The Response from Environmental Groups**

The HACAN ClearSkies group, which represents residents under the Heathrow flight path, countered the claims in the Financial Times article with its own press release. HACAN’s message was that its main aim in bringing the case was not to get compensation, but to stop the night flights. John Stewart, Chair of HACAN ClearSkies, said, “The Government has totally misunderstood where we are coming from. We didn’t go to Europe to make ourselves rich, but to get a good night’s sleep.”

Somewhat ironically, just hours after the Department of Transport, Local Government and the Regions (DTLR) had announced the intention to appeal against October’s European court ruling on night flights, the Department of Environment, Food and Rural Affairs (DEFRA) launched a campaign of its own designed to protect human rights. Speaking about the launch of the DEFRA’s proposals on an ambient noise strategy, Mr. Meacher, the Minister of Environment said “the right to sleep in your own home between 11pm and 6am is a fundamental human right”.

The Aviation Environment Federation (AEF) criticised the government for hiding news of its intention to appeal against the European Court of Human Rights’ decision on night flights at Heathrow Airport amongst its positive statements on the serious need to tackle noise problems announced yesterday.

Jeff Gazzard, a spokesperson for the AEF, said, “If the Government is serious about the need to tackle noise issues it should be abiding by the ECHR ruling, not seeking to have it overturned. Clearly this is a case of the left hand not knowing what the right hand is doing.”

### **The Next Stages**

The Government still has to be given leave to bring the appeal. A decision on this is expected around the end of January. If refused, the decision will stand. Although not legally binding, the Government has always adhered to previous judgements, and it is likely that it would have a public consultation on night flight arrangements at Heathrow before deciding how to proceed. However, if the appeal is allowed, a hearing will probably take place later this year.

This case will, no doubt, be followed with much interest by local groups, and GreenSkies will continue to keep the network informed of all developments.