
STATUTORY INSTRUMENTS

2009 No. 41

The Operation of Air Services in
the Community Regulations 2009

PART 3

Access to routes

Secretary of State's duty

23.—(1) The obligation of the Secretary of State, when taking any decision under Article 16, 17 or 18 of the EC Regulation, to comply with—

- (a) the provisions of the applicable Article, and
- (b) any enforceable Community obligation applicable to the imposition of a public service obligation concerning a scheduled air service,

is a duty owed to Community air carriers.

(2) A breach of that duty shall be actionable by any Community air carrier which, in consequence, suffers, or risks suffering, loss or damage.

(3) Any proceedings under this regulation must be brought in the High Court in England, Wales or Northern Ireland, or before the Court of Session in Scotland.

(4) Proceedings under this regulation must be brought promptly and in any event within 3 months from the date when grounds for the bringing of proceedings first arose unless the Court considers that there is good reason for extending the period within which proceedings may be brought.

(5) Subject to paragraph (6), but otherwise without prejudice to any other powers of the Court, in proceedings brought under this regulation the Court may—

- (a) by interim order suspend the implementation of any decision taken under Article 16, 17 or 18; and
- (b) if satisfied that a decision taken by the Secretary of State is in breach of the duty under paragraph (1) do either or both of the following—
 - (i) order the setting aside of that decision, or
 - (ii) award damages to an air carrier which has suffered loss or damage as a consequence of the breach.

(6) If the breach of the duty under paragraph (1) occurred in relation to an existing contract to operate services on a route subject to a public service obligation, the Court may only award damages in respect of that breach.