

## SCHEDULES

### SCHEDULE 3

Section 31

#### SERVICES AND PUBLIC FUNCTIONS: EXCEPTIONS

#### PART 1

#### CONSTITUTIONAL MATTERS

##### *Parliament*

- 1 (1) Section 29 does not apply to the exercise of—
  - (a) a function of Parliament;
  - (b) a function exercisable in connection with proceedings in Parliament.
- (2) Sub-paragraph (1) does not permit anything to be done to or in relation to an individual unless it is done by or in pursuance of a resolution or other deliberation of either House or of a Committee of either House.

##### *Legislation*

- 2 (1) Section 29 does not apply to preparing, making or considering—
  - (a) an Act of Parliament;
  - (b) a Bill for an Act of Parliament;
  - (c) an Act of the Scottish Parliament;
  - (d) a Bill for an Act of the Scottish Parliament;
  - (e) an Act of the National Assembly for Wales;
  - (f) a Bill for an Act of the National Assembly for Wales.
- (2) Section 29 does not apply to preparing, making, approving or considering—
  - (a) a Measure of the National Assembly for Wales;
  - (b) a proposed Measure of the National Assembly for Wales.
- (3) Section 29 does not apply to preparing, making, confirming, approving or considering an instrument which is made under an enactment by—
  - (a) a Minister of the Crown;
  - (b) the Scottish Ministers or a member of the Scottish Executive;
  - (c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.
- (4) Section 29 does not apply to preparing, making, confirming, approving or considering an instrument to which paragraph 6(a) of Schedule 2 to the Synodical Government Measure 1969 (1969 No. 2) (Measures, Canons, Acts of Synod, orders, etc.) applies.

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- (5) Section 29 does not apply to anything done in connection with the preparation, making, consideration, approval or confirmation of an instrument made by—
- (a) Her Majesty in Council;
  - (b) the Privy Council.
- (6) Section 29 does not apply to anything done in connection with the imposition of a requirement or condition which comes within Schedule 22 (statutory provisions).

*Judicial functions*

- 3 (1) Section 29 does not apply to—
- (a) a judicial function;
  - (b) anything done on behalf of, or on the instructions of, a person exercising a judicial function;
  - (c) a decision not to commence or continue criminal proceedings;
  - (d) anything done for the purpose of reaching, or in pursuance of, a decision not to commence or continue criminal proceedings.
- (2) A reference in sub-paragraph (1) to a judicial function includes a reference to a judicial function conferred on a person other than a court or tribunal.

*Armed forces*

- 4 (1) Section 29(6), so far as relating to relevant discrimination, does not apply to anything done for the purpose of ensuring the combat effectiveness of the armed forces.
- (2) “Relevant discrimination” is—
- (a) age discrimination;
  - (b) disability discrimination;
  - (c) gender reassignment discrimination;
  - (d) sex discrimination.

*Security services, etc.*

- 5 Section 29 does not apply to—
- (a) the Security Service;
  - (b) the Secret Intelligence Service;
  - (c) the Government Communications Headquarters;
  - (d) a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.

**PART 2**

EDUCATION

- 6 In its application to a local authority in England and Wales, section 29, so far as relating to age discrimination or religious or belief-related discrimination, does not apply to—

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- (a) the exercise of the authority's functions under section 14 of the [Education Act 1996](#) (provision of schools);
  - (b) the exercise of its function under section 13 of that Act in so far as it relates to a function of its under section 14 of that Act.
- 7 In its application to an education authority, section 29, so far as relating to age discrimination or religious or belief-related discrimination, does not apply to—
  - (a) the exercise of the authority's functions under section 17 of the Education (Scotland) Act 1980 (provision of schools);
  - (b) the exercise of its functions under section 1 of that Act, section 2 of the Standards in Scotland's Schools etc. Act 2000 ([asp 6](#)) or section 4 or 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 ([asp 4](#)) (general responsibility for education) in so far as it relates to a matter specified in paragraph (a);
  - (c) the exercise of its functions under subsection (1) of section 50 of the Education (Scotland) Act 1980 (education of pupils in exceptional circumstances) in so far as it consists of making arrangements of the description referred to in subsection (2) of that section.
- 8 (1) In its application to a local authority in England and Wales or an education authority, section 29, so far as relating to sex discrimination, does not apply to the exercise of the authority's functions in relation to the establishment of a school.  
(2) But nothing in sub-paragraph (1) is to be taken as disapplying section 29 in relation to the exercise of the authority's functions under section 14 of the Education Act 1996 or section 17 of the Education (Scotland) Act 1980.
- 9 Section 29, so far as relating to age discrimination, does not apply in relation to anything done in connection with—
  - (a) the curriculum of a school,
  - (b) admission to a school,
  - (c) transport to or from a school, or
  - (d) the establishment, alteration or closure of schools.
- 10 (1) Section 29, so far as relating to disability discrimination, does not require a local authority in England or Wales exercising functions under the Education Acts or an education authority exercising relevant functions to remove or alter a physical feature.  
(2) Relevant functions are functions under—
  - (a) the Education (Scotland) Act 1980,
  - (b) the Education (Scotland) Act 1996,
  - (c) the Standards in Scotland's Schools etc. Act 2000, or
  - (d) the Education (Additional Support for Learning) (Scotland) Act 2004.
- 11 Section 29, so far as relating to religious or belief-related discrimination, does not apply in relation to anything done in connection with—
  - (a) the curriculum of a school;
  - (b) admission to a school which has a religious ethos;
  - (c) acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum);
  - (d) the responsible body of a school which has a religious ethos;
  - (e) transport to or from a school;

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(f) the establishment, alteration or closure of schools.

12 This Part of this Schedule is to be construed in accordance with Chapter 1 of Part 6.

### PART 3

#### HEALTH AND CARE

##### *Blood services*

- 13 (1) A person operating a blood service does not contravene section 29 only by refusing to accept a donation of an individual's blood if—
- (a) the refusal is because of an assessment of the risk to the public, or to the individual, based on clinical, epidemiological or other data obtained from a source on which it is reasonable to rely, and
  - (b) the refusal is reasonable.
- (2) A blood service is a service for the collection and distribution of human blood for the purposes of medical services.
- (3) “Blood” includes blood components.

##### *Health and safety*

- 14 (1) A service-provider (A) who refuses to provide the service to a pregnant woman does not discriminate against her in contravention of section 29 because she is pregnant if—
- (a) A reasonably believes that providing her with the service would, because she is pregnant, create a risk to her health or safety,
  - (b) A refuses to provide the service to persons with other physical conditions, and
  - (c) the reason for that refusal is that A reasonably believes that providing the service to such persons would create a risk to their health or safety.
- (2) A service-provider (A) who provides, or offers to provide, the service to a pregnant woman on conditions does not discriminate against her in contravention of section 29 because she is pregnant if—
- (a) the conditions are intended to remove or reduce a risk to her health or safety,
  - (b) A reasonably believes that the provision of the service without the conditions would create a risk to her health or safety,
  - (c) A imposes conditions on the provision of the service to persons with other physical conditions, and
  - (d) the reason for the imposition of those conditions is that A reasonably believes that the provision of the service to such persons without those conditions would create a risk to their health or safety.

##### *Care within the family*

- 15 A person (A) does not contravene section 29 only by participating in arrangements under which (whether or not for reward) A takes into A's home, and treats as members of A's family, persons requiring particular care and attention.

## PART 4

### IMMIGRATION

#### *Disability*

- 16 (1) This paragraph applies in relation to disability discrimination.
- (2) Section 29 does not apply to—
- (a) a decision within sub-paragraph (3);
  - (b) anything done for the purposes of or in pursuance of a decision within that sub-paragraph.
- (3) A decision is within this sub-paragraph if it is a decision (whether or not taken in accordance with immigration rules) to do any of the following on the ground that doing so is necessary for the public good—
- (a) to refuse entry clearance;
  - (b) to refuse leave to enter or remain in the United Kingdom;
  - (c) to cancel leave to enter or remain in the United Kingdom;
  - (d) to vary leave to enter or remain in the United Kingdom;
  - (e) to refuse an application to vary leave to enter or remain in the United Kingdom.
- (4) Section 29 does not apply to—
- (a) a decision taken, or guidance given, by the Secretary of State in connection with a decision within sub-paragraph (3);
  - (b) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision within that sub-paragraph.

#### *Nationality and ethnic or national origins*

- 17 (1) This paragraph applies in relation to race discrimination so far as relating to—
- (a) nationality, or
  - (b) ethnic or national origins.
- (2) Section 29 does not apply to anything done by a relevant person in the exercise of functions exercisable by virtue of a relevant enactment.
- (3) A relevant person is—
- (a) a Minister of the Crown acting personally, or
  - (b) a person acting in accordance with a relevant authorisation.
- (4) A relevant authorisation is a requirement imposed or express authorisation given—
- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
  - (b) with respect to a particular class of case, by a relevant enactment or by an instrument made under or by virtue of a relevant enactment.
- (5) The relevant enactments are—
- (a) the Immigration Acts,
  - (b) the Special Immigration Appeals Commission Act 1997,

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- (c) a provision made under section 2(2) of the European Communities Act 1972 which relates to immigration or asylum, and
  - (d) a provision of Community law which relates to immigration or asylum.
- (6) The reference in sub-paragraph (5)(a) to the Immigration Acts does not include a reference to—
- (a) sections 28A to 28K of the Immigration Act 1971 (powers of arrest, entry and search, etc.), or
  - (b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (power of arrest).

*Religion or belief*

- 18 (1) This paragraph applies in relation to religious or belief-related discrimination.
- (2) Section 29 does not apply to a decision within sub-paragraph (3) or anything done for the purposes of or in pursuance of a decision within that sub-paragraph.
- (3) A decision is within this sub-paragraph if it is a decision taken in accordance with immigration rules—
- (a) to refuse entry clearance or leave to enter the United Kingdom, or to cancel leave to enter or remain in the United Kingdom, on the grounds that the exclusion of the person from the United Kingdom is conducive to the public good, or
  - (b) to vary leave to enter or remain in the United Kingdom, or to refuse an application to vary leave to enter or remain in the United Kingdom, on the grounds that it is undesirable to permit the person to remain in the United Kingdom.
- (4) Section 29 does not apply to a decision within sub-paragraph (5), or anything done for the purposes of or in pursuance of a decision within that sub-paragraph, if the decision is taken on grounds mentioned in sub-paragraph (6).
- (5) A decision is within this sub-paragraph if it is a decision (whether or not taken in accordance with immigration rules) in connection with an application for entry clearance or for leave to enter or remain in the United Kingdom.
- (6) The grounds referred to in sub-paragraph (4) are—
- (a) the grounds that a person holds an office or post in connection with a religion or belief or provides a service in connection with a religion or belief,
  - (b) the grounds that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or
  - (c) the grounds that the exclusion from the United Kingdom of a person to whom paragraph (a) applies is conducive to the public good.
- (7) Section 29 does not apply to—
- (a) a decision taken, or guidance given, by the Secretary of State in connection with a decision within sub-paragraph (3) or (5);
  - (b) a decision taken in accordance with guidance given by the Secretary of State in connection with a decision within either of those sub-paragraphs.

### *Interpretation*

- 19 A reference to entry clearance, leave to enter or remain or immigration rules is to be construed in accordance with the Immigration Act 1971.

## **PART 5**

### INSURANCE, ETC.

#### *Services arranged by employer*

- 20 (1) Section 29 does not apply to the provision of a relevant financial service if the provision is in pursuance of arrangements made by an employer for the service-provider to provide the service to the employer's employees, and other persons, as a consequence of the employment.
- (2) "Relevant financial service" means—
- (a) insurance or a related financial service, or
  - (b) a service relating to membership of or benefits under a personal pension scheme (within the meaning given by section 1 of the Pension Schemes Act 1993).

#### *Disability*

- 21 (1) It is not a contravention of section 29, so far as relating to disability discrimination, to do anything in connection with insurance business if—
- (a) that thing is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it is reasonable to rely, and
  - (b) it is reasonable to do that thing.
- (2) "Insurance business" means business which consists of effecting or carrying out contracts of insurance; and that definition is to be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order under that Act, and
  - (c) Schedule 2 to that Act.

#### *Sex, gender reassignment, pregnancy and maternity*

- 22 (1) It is not a contravention of section 29, so far as relating to relevant discrimination, to do anything in relation to an annuity, life insurance policy, accident insurance policy or similar matter involving the assessment of risk if—
- (a) that thing is done by reference to actuarial or other data from a source on which it is reasonable to rely, and
  - (b) it is reasonable to do that thing.
- (2) In the case of a contract of insurance, or a contract for related financial services, entered into before 6 April 2008, sub-paragraph (1) applies only in relation to differences in premiums and benefits that are applicable to a person under the contract.

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- (3) In the case of a contract of insurance, or a contract for related financial services, entered into on or after 6 April 2008, sub-paragraph (1) applies only in relation to differences in premiums and benefits if—
- (a) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data,
  - (b) the data are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury,
  - (c) the differences are proportionate having regard to the data, and
  - (d) the differences do not result from costs related to pregnancy or to a woman's having given birth in the period of 26 weeks ending on the day on which the thing in question is done.
- (4) “Relevant discrimination” is—
- (a) gender reassignment discrimination;
  - (b) pregnancy and maternity discrimination;
  - (c) sex discrimination.
- (5) For the purposes of the application of sub-paragraph (3) to gender reassignment discrimination by virtue of section 13, that section has effect as if in subsection (1), after “others” there were inserted “of B's sex”.
- (6) In the application of sub-paragraph (3) to a contract entered into before 22 December 2008, paragraph (d) is to be ignored.

*Existing insurance policies*

- 23 (1) It is not a contravention of section 29, so far as relating to relevant discrimination, to do anything in connection with insurance business in relation to an existing insurance policy.
- (2) “Relevant discrimination” is—
- (a) age discrimination;
  - (b) disability discrimination;
  - (c) gender reassignment discrimination;
  - (d) pregnancy and maternity discrimination;
  - (e) race discrimination;
  - (f) religious or belief-related discrimination;
  - (g) sex discrimination;
  - (h) sexual orientation discrimination.
- (3) An existing insurance policy is a policy of insurance entered into before the date on which this paragraph comes into force.
- (4) Sub-paragraph (1) does not apply where an existing insurance policy was renewed, or the terms of such a policy were reviewed, on or after the date on which this paragraph comes into force.
- (5) A review of an existing insurance policy which was part of, or incidental to, a general reassessment by the service-provider of the pricing structure for a group of policies is not a review for the purposes of sub-paragraph (4).
- (6) “Insurance business” has the meaning given in paragraph 21.



## PART 6

### MARRIAGE

#### *Gender reassignment: England and Wales*

- 24 (1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in reliance on section 5B of the Marriage Act 1949 (solemnisation of marriages involving person of acquired gender).
- (2) A person (A) whose consent to the solemnisation of the marriage of a person (B) is required under section 44(1) of the Marriage Act 1949 (solemnisation in registered building) does not contravene section 29, so far as relating to gender reassignment discrimination, by refusing to consent if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.
- (3) Sub-paragraph (4) applies to a person (A) who may, in a case that comes within the Marriage Act 1949 (other than the case mentioned in sub-paragraph (1)), solemnise marriages according to a form, rite or ceremony of a body of persons who meet for religious worship.
- (4) A does not contravene section 29, so far as relating to gender reassignment discrimination, by refusing to solemnise, in accordance with a form, rite or ceremony as described in sub-paragraph (3), the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.

#### *Gender reassignment: Scotland*

- 25 (1) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to solemnise the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.
- (2) In sub-paragraph (1) "approved celebrant" has the meaning given in section 8(2)(a) of the Marriage (Scotland) Act 1977 (persons who may solemnise marriage).

## PART 7

### SEPARATE AND SINGLE SERVICES

#### *Separate services for the sexes*

- 26 (1) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services for persons of each sex if—
- (a) a joint service for persons of both sexes would be less effective, and
  - (b) the limited provision is a proportionate means of achieving a legitimate aim.
- (2) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services differently for persons of each sex if—
- (a) a joint service for persons of both sexes would be less effective,

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- (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex, and
  - (c) the limited provision is a proportionate means of achieving a legitimate aim.
- (3) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

### *Single-sex services*

- 27 (1) A person does not contravene section 29, so far as relating to sex discrimination, by providing a service only to persons of one sex if—
- (a) any of the conditions in sub-paragraphs (2) to (7) is satisfied, and
  - (b) the limited provision is a proportionate means of achieving a legitimate aim.
- (2) The condition is that only persons of that sex have need of the service.
- (3) The condition is that—
- (a) the service is also provided jointly for persons of both sexes, and
  - (b) the service would be insufficiently effective were it only to be provided jointly.
- (4) The condition is that—
- (a) a joint service for persons of both sexes would be less effective, and
  - (b) the extent to which the service is required by persons of each sex makes it not reasonably practicable to provide separate services.
- (5) The condition is that the service is provided at a place which is, or is part of—
- (a) a hospital, or
  - (b) another establishment for persons requiring special care, supervision or attention.
- (6) The condition is that—
- (a) the service is provided for, or is likely to be used by, two or more persons at the same time, and
  - (b) the circumstances are such that a person of one sex might reasonably object to the presence of a person of the opposite sex.
- (7) The condition is that—
- (a) there is likely to be physical contact between a person (A) to whom the service is provided and another person (B), and
  - (b) B might reasonably object if A were not of the same sex as B.
- (8) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

### *Gender reassignment*

- 28 (1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.

- (2) The matters are—
- (a) the provision of separate services for persons of each sex;
  - (b) the provision of separate services differently for persons of each sex;
  - (c) the provision of a service only to persons of one sex.

*Services relating to religion*

- 29 (1) A minister does not contravene section 29, so far as relating to sex discrimination, by providing a service only to persons of one sex or separate services for persons of each sex, if—
- (a) the service is provided for the purposes of an organised religion,
  - (b) it is provided at a place which is (permanently or for the time being) occupied or used for those purposes, and
  - (c) the limited provision of the service is necessary in order to comply with the doctrines of the religion or is for the purpose of avoiding conflict with the strongly held religious convictions of a significant number of the religion's followers.
- (2) The reference to a minister is a reference to a minister of religion, or other person, who—
- (a) performs functions in connection with the religion, and
  - (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, a relevant organisation in relation to the religion.
- (3) An organisation is a relevant organisation in relation to a religion if its purpose is—
- (a) to practise the religion,
  - (b) to advance the religion,
  - (c) to teach the practice or principles of the religion,
  - (d) to enable persons of the religion to receive benefits, or to engage in activities, within the framework of that religion, or
  - (e) to foster or maintain good relations between persons of different religions.
- (4) But an organisation is not a relevant organisation in relation to a religion if its sole or main purpose is commercial.

*Services generally provided only for persons who share a protected characteristic*

- 30 If a service is generally provided only for persons who share a protected characteristic, a person (A) who normally provides the service for persons who share that characteristic does not contravene section 29(1) or (2)—
- (a) by insisting on providing the service in the way A normally provides it, or
  - (b) if A reasonably thinks it is impracticable to provide the service to persons who do not share that characteristic, by refusing to provide the service.

**PART 8**

TELEVISION, RADIO AND ON-LINE BROADCASTING AND DISTRIBUTION

- 31 (1) Section 29 does not apply to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003).

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- (2) Sub-paragraph (1) does not apply to the provision of an electronic communications network, electronic communications service or associated facility (each of which has the same meaning as in that Act).

## PART 9

### TRANSPORT

#### *Application to disability*

- 32 This Part of this Schedule applies in relation to disability discrimination.

#### *Transport by air*

- 33 (1) Section 29 does not apply to—
- (a) transporting people by air;
  - (b) a service provided on a vehicle for transporting people by air.
- (2) Section 29 does not apply to anything governed by Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

#### *Transport by land*

- 34 (1) Section 29 does not apply to transporting people by land, unless the vehicle concerned is—
- (a) a hire-vehicle designed and constructed for the carriage of passengers and comprising no more than 8 seats in addition to the driver's seat,
  - (b) a hire-vehicle designed and constructed for the carriage of passengers, comprising more than 8 seats in addition to the driver's seat and having a maximum mass not exceeding 5 tonnes,
  - (c) a hire-vehicle designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes,
  - (d) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998 (or under a provision of a local Act corresponding to either of those provisions),
  - (e) a private hire car (within the meaning of section 23 of the Civic Government (Scotland) Act 1982),
  - (f) a public service vehicle (within the meaning given by section 1 of the Public Passenger Vehicles Act 1981),
  - (g) a vehicle built or adapted to carry passengers on a railway or tramway (within the meaning, in each case, of the Transport and Works Act 1992),
  - (h) a taxi,
  - (i) a vehicle deployed to transport the driver and passengers of a vehicle that has broken down or is involved in an accident, or
  - (j) a vehicle deployed on a system using a mode of guided transport (within the meaning of the Transport and Works Act 1992).

- (2) Paragraph 4 of Schedule 2 applies for the purposes of this paragraph as it applies for the purposes of paragraph 3 of that Schedule.

## PART 10

### SUPPLEMENTARY

#### *Power to amend*

- 35 (1) A Minister of the Crown may by order amend this Schedule—
- (a) so as to add, vary or omit an exception to section 29, so far as relating to disability, religion or belief or sexual orientation;
  - (b) so as to add, vary or omit an exception to section 29(6), so far as relating to gender reassignment, pregnancy and maternity, race or sex.
- (2) But provision by virtue of sub-paragraph (1) may not amend this Schedule—
- (a) so as to omit an exception in paragraph 1, 2 or 3;
  - (b) so as to reduce the extent to which an exception in paragraph 1, 2 or 3 applies.
- (3) For the purposes of an order under sub-paragraph (1)(a), so far as relating to disability, which makes provision in relation to transport by air, it does not matter whether the transport is within or outside the United Kingdom.
- (4) Before making an order under this paragraph the Minister must consult the Commission.
- (5) Nothing in this paragraph affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.