

## SCHEDULE 1

### INDUSTRIAL TRIBUNAL RULES OF PROCEDURE

#### *Powers in relation to specific types of proceedings*

#### **Sexual offences and the Register**

49. In any proceedings involving allegations of the commission of a sexual offence the tribunal, the chairman or the Secretary shall omit from the Register, or delete from the Register or any decision, document or record of the proceedings, which is available to the public, any identifying matter which is likely to lead members of the public to identify any person affected by or making such an allegation.

#### **Restricted reporting orders**

50.—(1) A restricted reporting order may be made in the following types of proceedings –

- (a) any case which involves allegations of sexual misconduct;
- (b) a complaint under section 17A or 25(8)(1) of the Disability Discrimination Act in which evidence of a personal nature is likely to be heard by the tribunal or a chairman.

(2) A party may apply for a restricted reporting order (either temporary or full) in writing to the Office of the Tribunals, or orally at a hearing, or the tribunal or chairman may make the order on its or his own initiative without any application having been made.

(3) A chairman or tribunal may make a temporary restricted reporting order without holding a hearing or sending a copy of the application to other parties.

(4) Where a temporary restricted reporting order has been made the Secretary shall inform all parties to the proceedings in writing as soon as possible of –

- (a) the fact that the order has been made; and
- (b) their right to apply to have the temporary restricted reporting order revoked or converted into a full restricted reporting order within 14 days of the temporary order having been made.

(5) If no application is made under paragraph (4)(b) within the 14 days, the temporary restricted reporting order shall lapse and cease to have any effect on the fifteenth day after the order was made. If such an application is made the temporary restricted reporting order shall continue to have effect until the pre-hearing review or hearing under rule 26 at which the application is considered.

(6) All parties must be given an opportunity to advance oral argument at a pre-hearing review or a hearing under rule 26 before a tribunal or chairman decides whether or not to make a full restricted reporting order (whether or not there was previously a temporary restricted reporting order in the proceedings).

(7) Any person may make an application to the chairman or tribunal to have a right to make representations before a full restricted reporting order is made. The chairman or tribunal shall allow such representations to be made where he or it considers that the applicant has a legitimate interest in whether or not the order is made.

(8) Where a tribunal or chairman makes a restricted reporting order –

- (a) it or he shall specify in the order the persons who may not be identified;

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(1) Section 8 was renumbered 17A by [S.R. 2004 No. 55](#), regulation 9; section 25(8) was inserted by [S.R. 2004 No. 55](#), regulation 19(3)

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- (b) a full order shall remain in force until both liability and remedy have been determined in the proceedings unless it is revoked earlier; and
- (c) the Secretary shall ensure that a notice of the fact that a restricted reporting order has been made in relation to those proceedings is displayed on the notice board of the industrial tribunal with any list of the proceedings taking place before the industrial tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(9) Where a restricted reporting order has been made under paragraph (1)(b) and the proceedings to which it relates are being dealt with together with any other proceedings, the tribunal or chairman may order that the restricted reporting order applies also in relation to those other proceedings or a part of them.

(10) A tribunal or chairman may revoke a restricted reporting order at any time.

(11) For the purposes of this rule liability and remedy are determined in the proceedings on the date recorded as being the date on which the decision disposing of the claim was sent to the parties, and references to a restricted reporting order include references to both a temporary and a full restricted reporting order.

### **Proceedings involving the Northern Ireland National Insurance Fund**

51. The Department shall be entitled to appear as if it were a party and be heard at any hearing in relation to proceedings which may involve a payment out of the Northern Ireland National Insurance Fund, and in that event it shall be treated for the purposes of these Rules as if it were a party.

### **Collective agreements**

52. Where a claim includes a complaint under Article 77A(4A)(2) of the Sex Discrimination Order relating to a term of a collective agreement, the following persons, whether or not identified in the claim, shall be regarded as the persons against whom a remedy is claimed and shall be treated as respondents for the purposes of these Rules, that is to say –

- (a) the claimant's employer (or prospective employer); and
- (b) every organisation of employers and organisation of workers, and every association of or representative of such organisations, which, if the terms were to be varied voluntarily, would be likely, in the opinion of a chairman, to negotiate the variation;

provided that such an organisation or association shall not be treated as a respondent if the chairman, having made such enquiries of the claimant and such other enquiries as he thinks fit, is of the opinion that it is not reasonably practicable to identify the organisation or association.

### **Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981**

53. In relation to any claim in respect of an application under Article 5C of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(3) for the variation or revocation of a prohibition order, the Department shall be treated as the respondent in such proceedings for the purposes of these Rules. In relation to such an application the claim does not need to include the name and address of the persons against whom the claim is being made.

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(2) Paragraph (4A) was inserted into Article 77A by S.I. 1993/2668 (N.I. 11), Article 11

(3) S.I. 1981/839 (N.I. 20); Article 5C was inserted by 1994 c. 40 section 35 and Schedule 10 paragraph 2(2)

### **National security proceedings**

54.—(1) The Secretary of State (whether or not he is a party to the proceedings) may, if he considers it expedient in the interests of national security, direct a tribunal or chairman by notice to the Secretary to –

- (a) conduct proceedings in private for all or part of particular Crown employment proceedings;
- (b) exclude the claimant from all or part of particular Crown employment proceedings;
- (c) exclude the claimant's representatives from all or part of particular Crown employment proceedings;
- (d) take steps to conceal the identity of a particular witness in particular Crown employment proceedings.

(2) A tribunal or chairman may, if it or he considers it expedient in the interests of national security, by order –

- (a) do anything which can be required by direction to be done under paragraph (1);
- (b) order any person to whom any document (including any decision or record of the proceedings) has been provided for the purposes of the proceedings not to disclose any such document or the content thereof to –
  - (i) any excluded person;
  - (ii) in any case in which a direction has been given under paragraph (1)(a) or an order has been made under sub-paragraph (a) read with paragraph (1)(a), to any person excluded from all or part of the proceedings by virtue of such direction or order; or
  - (iii) in any case in which the Secretary of State has informed the Secretary in accordance with paragraph (3) that he wishes to address the tribunal or chairman with a view to an order being made under sub-paragraph (a) read with paragraph (1)(b) or (c), to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the tribunal or chairman decides whether or not to make such an order;

- (c) take steps to keep secret all or part of the reasons for its decision,

and the tribunal or chairman (as the case may be) shall keep under review any order it or he has made under this paragraph.

(3) In any proceedings in which the Secretary of State considers that it would be appropriate for a tribunal or chairman to make an order as referred to in paragraph (2), he shall (whether or not he is a party to the proceedings) be entitled to appear before and to address the tribunal or chairman thereon. The Secretary of State shall inform the Secretary by notice that he wishes to address the tribunal or chairman and the Secretary shall copy the notice to the parties.

(4) When exercising its or his functions, a tribunal or chairman shall ensure that information is not disclosed contrary to the interests of national security.

### **Dismissals in connection with industrial action**

55.—(1) In relation to a complaint under Article 145 of the Employment Rights Order (unfair dismissal: complaint to industrial tribunal) that a dismissal is unfair by virtue of Article 144A(4) of that Order (participation in official industrial action) a tribunal or chairman may adjourn the proceedings where civil proceedings have been brought until such time as interim proceedings arising out of the civil proceedings have been concluded.

(2) In this rule –

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(4) Article 144A was inserted by [S.I. 1999/2790 \(N.I. 9\)](#), Schedule 5, paragraph 6

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- (a) “civil proceedings” means legal proceedings brought by any person against another person in which it is to be determined whether an act of that other person, which induced the claimant to commit an act, or each of a series of acts, is by virtue of Article 97 of the Trade Union and Labour Relations (Northern Ireland) Order 1995<sup>(5)</sup> not actionable in tort; and
- (b) the interim proceedings shall not be regarded as having concluded until all rights of appeal have been exhausted or the time for presenting any appeal in the course of the interim proceedings has expired.

### **Devolution issues**

56.—(1) In any proceedings in which a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998<sup>(6)</sup> arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless they are a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the claim and the response.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receiving it, by notice to the Secretary, take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

### **References to the European Court of Justice**

57. Where a tribunal or chairman makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 234 of the Treaty establishing the European Community, the Secretary shall send a copy of the order to the Registrar of that Court.

### **Transfer of proceedings from a court**

58. Where proceedings are referred to a tribunal by a court, these Rules shall apply to them as if the proceedings had been sent to the Secretary by the claimant.

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<sup>(5)</sup> S.I. 1995/1980 (N.I. 12)  
<sup>(6)</sup> 1998 c. 47