

EMPLOYMENT RELATIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous

Section 41 and Schedule 8: National security

313. Crown servants (including staff of the security and intelligence agencies) may be excluded by Ministers of the Crown from certain rights conferred by employment legislation on grounds of national security. *Section 41* gives effect to Schedule 8, which will remove some of these powers, allowing - in particular - staff of the security and intelligence agencies to present complaints about breaches of employment legislation to employment tribunals in as similar a way as possible to other employees.
314. *Paragraph 1* amends section 193 of the 1996 Act removing the power of Ministers to exclude certain persons in Crown employment from many of the rights under that Act (with the exception of those rights created by the Public Interest Disclosure Act 1998).
315. *Paragraph 2* repeals section 4(7) of 1996 Act which provides that a Minister of the Crown may direct that the proceedings of an employment tribunal must be heard and determined by the Employment Tribunal President alone.
316. *Paragraph 3* substitutes a new section 10 into the Employment Tribunals Act 1996. The new section retains the national security defence to unfair dismissal complaints and complaints under section 146 of the 1992 Act. However, it removes the power of Ministers to conclusively certify that an act was done on grounds of national security. It also puts in place new safeguards to protect the interests of national security. Employment tribunal procedure regulations may enable Ministers of the Crown to direct, in the interests of national security, that Crown employment proceedings are heard by specially constituted tribunals. Ministers may direct that special procedures (as provided in the regulations) should apply, for example, excluding an applicant or his representative from all or part of proceedings, concealing the identity of a witness, or keeping secret all or parts of the reasons for a decision. Employment tribunals will also generally be able to order that these arrangements apply in cases involving national security where a direction has not been made by a Minister. The procedure regulations may make provision, where an applicant and his representative are excluded, for appointing a special advocate to represent the applicant's interests and for the applicant or his representative to make a statement of his case before they are excluded.
317. New section 10A re-enacts the present section 10(2) and (3) of the Employment Tribunals Act 1996, which allow the tribunal to sit in private in certain circumstances.
318. Where a tribunal has been directed to conceal the identity of a witness or to keep secret all or part of the reasons for its decisions, new section 10B makes it an offence to publish anything likely to lead to the identification of the witness or the secret part of the reasons for its decision and sets out the penalty for such an offence.

*These notes refer to the Employment Relations Act 1999
(c.26) which received Royal Assent on 27 July 1999*

319. *Paragraph 4* provides that section 28(5) of the Employment Tribunals Act 1996 (which provides that a Minister of the Crown may direct that proceedings be heard and determined by the Employment Appeal Tribunal President alone) shall cease to have effect. *Paragraph 5* provides (in a way similar to the provision made for employment tribunals), that a Minister of the Crown may direct that appeals in national security cases be heard by a specially constituted Appeal Tribunal and that special procedures are to be used, and for the appointment of a special advocate to represent the interests of an excluded person.
320. *Paragraphs 6 and 7* remove the power of Ministers to issue certificates which are conclusive as to the fact that an act was done on grounds of national security for the purposes of the Race Relations Act 1976 and the Disability Discrimination Act 1995 respectively.