

SCHEDULES

SCHEDULE 8

Section 41.

NATIONAL SECURITY

- 1 The following shall be substituted for section 193 of the Employment Rights Act 1996 (national security)—

“193 National security

Part IVA and section 47B of this Act do not apply in relation to employment for the purposes of—

- (a) the Security Service,
- (b) the Secret Intelligence Service, or
- (c) the Government Communications Headquarters.”

- 2 Section 4(7) of the Employment Tribunals Act 1996 (composition of tribunal: national security) shall cease to have effect.

- 3 The following shall be substituted for section 10 of that Act (national security, &c.)
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“10 National security

- (1) If on a complaint under—
 - (a) section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (detriment: trade union membership), or
 - (b) section 111 of the Employment Rights Act 1996 (unfair dismissal),it is shown that the action complained of was taken for the purpose of safeguarding national security, the employment tribunal shall dismiss the complaint.
- (2) Employment tribunal procedure regulations may make provision about the composition of the tribunal (including provision disapplying or modifying section 4) for the purposes of proceedings in relation to which—
 - (a) a direction is given under subsection (3), or
 - (b) an order is made under subsection (4).
- (3) A direction may be given under this subsection by a Minister of the Crown if—
 - (a) it relates to particular Crown employment proceedings, and
 - (b) the Minister considers it expedient in the interests of national security.
- (4) An order may be made under this subsection by the President or a Regional Chairman in relation to particular proceedings if he considers it expedient in the interests of national security.

Status: This is the original version (as it was originally enacted).

- (5) Employment tribunal procedure regulations may make provision enabling a Minister of the Crown, if he considers it expedient in the interests of national security—
- (a) to direct a tribunal to sit in private for all or part of particular Crown employment proceedings;
 - (b) to direct a tribunal to exclude the applicant from all or part of particular Crown employment proceedings;
 - (c) to direct a tribunal to exclude the applicant's representatives from all or part of particular Crown employment proceedings;
 - (d) to direct a tribunal to take steps to conceal the identity of a particular witness in particular Crown employment proceedings;
 - (e) to direct a tribunal to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.
- (6) Employment tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do anything of a kind which a tribunal can be required to do by direction under subsection (5) (a) to (e).
- (7) In relation to cases where a person has been excluded by virtue of subsection (5)(b) or (c) or (6), employment tribunal procedure regulations may make provision—
- (a) for the appointment by the Attorney General, or by the Advocate General for Scotland, of a person to represent the interests of the applicant;
 - (b) about the publication and registration of reasons for the tribunal's decision;
 - (c) permitting an excluded person to make a statement to the tribunal before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.
- (8) Proceedings are Crown employment proceedings for the purposes of this section if the employment to which the complaint relates—
- (a) is Crown employment, or
 - (b) is connected with the performance of functions on behalf of the Crown.
- (9) The reference in subsection (4) to the President or a Regional Chairman is to a person appointed in accordance with regulations under section 1(1) as—
- (a) a Regional Chairman,
 - (b) President of the Employment Tribunals (England and Wales), or
 - (c) President of the Employment Tribunals (Scotland).

10A Confidential information

- (1) Employment tribunal procedure regulations may enable an employment tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—
- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment,

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- (b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
 - (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992, cause substantial injury to any undertaking of his or in which he works.
- (2) The reference in subsection (1)(c) to any undertaking of a person or in which he works shall be construed—
- (a) in relation to a person in Crown employment, as a reference to the national interest,
 - (b) in relation to a person who is a relevant member of the House of Lords staff, as a reference to the national interest or (if the case so requires) the interests of the House of Lords, and
 - (c) in relation to a person who is a relevant member of the House of Commons staff, as a reference to the national interest or (if the case so requires) the interests of the House of Commons.

10B Restriction of publicity in cases involving national security

- (1) This section applies where a tribunal has been directed under section 10(5) or has determined under section 10(6)—
- (a) to take steps to conceal the identity of a particular witness, or
 - (b) to take steps to keep secret all or part of the reasons for its decision.
- (2) It is an offence to publish—
- (a) anything likely to lead to the identification of the witness, or
 - (b) the reasons for the tribunal's decision or the part of its reasons which it is directed or has determined to keep secret.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication in question was of, or included, the matter in question.
- (5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person purporting to act in any such capacity,
- he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) A reference in this section to publication includes a reference to inclusion in a programme which is included in a programme service, within the meaning of the Broadcasting Act 1990.”

Status: This is the original version (as it was originally enacted).

- 4 Section 28(5) of the Employment Tribunals Act 1996 (composition of Appeal Tribunal: national security) shall cease to have effect.
- 5 (1) Section 30 of that Act (Appeal Tribunal Procedure rules) shall be amended as follows.
- (2) In subsection (2)(d) for “section 10” substitute “section 10A”.
- (3) After subsection (2) insert—
- “(2A) Appeal Tribunal procedure rules may make provision of a kind which may be made by employment tribunal procedure regulations under section 10(2), (5), (6) or (7).
- (2B) For the purposes of subsection (2A)—
- (a) the reference in section 10(2) to section 4 shall be treated as a reference to section 28, and
- (b) the reference in section 10(4) to the President or a Regional Chairman shall be treated as a reference to a judge of the Appeal Tribunal.
- (2C) Section 10B shall have effect in relation to a direction to or determination of the Appeal Tribunal as it has effect in relation to a direction to or determination of an employment tribunal.”
- 6 After section 69(2) of the Race Relations Act 1976 (evidence: Minister’s certificate as to national security, &c.) there shall be inserted—
- “(2A) Subsection (2)(b) shall not have effect for the purposes of proceedings on a complaint under section 54.”
- 7 Paragraph 4(1)(b) of Schedule 3 to the Disability Discrimination Act 1995 (evidence: Minister’s certificate as to national security, &c.) shall cease to have effect.