

SCHEDULE 1

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

POWERS IN RELATION TO SPECIFIC TYPES OF PROCEEDINGS

Sexual offences and the Register

49. In any proceedings appearing to involve 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 judgment, 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) 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 (or where a complaint is made under the Disability Discrimination Act, the complainant) may apply for a restricted reporting order (either temporary or full) in writing to the Employment Tribunal Office, 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 under paragraph (4)(b) is made 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 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 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 shall specify in the order the persons who may not be identified;
- (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 employment tribunal with any list of the proceedings taking place before the employment 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 this rule and that complaint is 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 judgment 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 National Insurance Fund

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

Collective agreements

52. Where a claim includes a complaint under section 6(4A) of the Sex Discrimination Act 1986⁽¹⁾ 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 Agencies Act 1973

53. In relation to any claim in respect of an application under section 3C of the Employment Agencies Act 1973⁽²⁾ for the variation or revocation of a prohibition order, the Secretary of State 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.

National security proceedings

54.—(1) A Minister of the Crown (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;

⁽¹⁾ 1986 c. 59.

⁽²⁾ 1973 c. 35; section 3C was inserted by paragraphs 1(1) and (3) of Schedule 10 to the Deregulation and Contracting Out Act 1994 c. 40.

- (b) exclude the claimant from all or part of particular Crown employment proceedings;
 - (c) exclude the claimant's representative 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 judgment or record of the proceedings) has been provided for the purposes of the proceedings not to disclose any such document or the content thereof:—
 - (i) to 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 paragraph (2)(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 a Minister of the Crown 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 paragraph (2)(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 judgment.

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 a Minister of the Crown 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 Minister 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 section 111 of the Employment Rights Act 1996 (unfair dismissal: complaints to employment tribunal) that a dismissal is unfair by virtue of section 238A of TULR(C)A⁽³⁾ (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 —

- (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 section 219 of TULR(C)A not actionable in tort or in delict; and

(3) Section 238A was inserted by paragraphs 1 and 3 of Schedule 5 to the Employment Relations Act 1999 (c. 26).

- (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 definition of the term in paragraph 1 of Schedule 6 to the Scotland Act 1998 arises, the Secretary shall as soon as reasonably practicable by notice inform the Advocate General for Scotland and the Lord Advocate 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 the Advocate General for Scotland and the Lord Advocate a copy of the claim and the response.

(2) In any proceedings in which a devolution issue within the definition of the term in paragraph 1 of Schedule 8 to the Government of Wales Act 1998 arises, the Secretary shall as soon as reasonably practicable by notice inform the Attorney General and the National Assembly for Wales 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 the Attorney General and the National Assembly for Wales a copy of the claim and the response.

(3) A person to whom notice is given in pursuance of paragraph (1) or (2) 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.

Transfer of proceedings between Scotland and England & Wales

57.—(1) The President (England and Wales) or a Regional Chairman may at any time, with the consent of the President (Scotland), order any proceedings in England and Wales to be transferred to an Employment Tribunal Office in Scotland if it appears to him that the proceedings could be (in accordance with regulation 19), and would more conveniently be, determined in an employment tribunal located in Scotland.

(2) The President (Scotland) or the Vice President may at any time, with the consent of the President (England and Wales), order any proceedings in Scotland to be transferred to an Employment Tribunal Office in England and Wales if it appears to him that the proceedings could be (in accordance with regulation 19), and would more conveniently be, determined in an employment tribunal located in England or Wales.

(3) An order under paragraph (1) or (2) may be made by the President, Vice President or Regional Chairman without any application having been made by a party. A party may apply for an order under paragraph (1) or (2) in accordance with rule 11.

(4) Where proceedings have been transferred under this rule, they shall be treated as if in all respects they had been presented to the Secretary by the claimant.

References to the European Court of Justice

58. 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

59. 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.