

SCHEDULE 2

Regulation 16(2)

THE EMPLOYMENT TRIBUNALS (NATIONAL SECURITY) RULES OF PROCEDURE

Application of Schedule 2

1.—(1) The rules in this Schedule only apply to national security proceedings or proceedings where the right in rule 54(3) of Schedule 1 has been exercised.

(2) The rules in this Schedule modify the rules in Schedule 1 in relation to such proceedings. If there is conflict between the rules contained in this Schedule and those in any other Schedule to these Regulations, the rules in this Schedule shall prevail.

(3) Any reference in this Schedule to rule 54 is a reference to rule 54 in Schedule 1.

Notification of national security proceedings

2. When proceedings before an employment tribunal become national security proceedings the Secretary shall inform the parties of that fact in writing as soon as practicable.

Responding to a claim

3.—(1) If before the expiry of the period for entering the response —

- (a) a direction of a Minister of the Crown under rule 54(1)(b) (exclusion of claimant) applicable to this stage of the proceedings is given; or
- (b) a Minister of the Crown has informed the Secretary in accordance with rule 54(3) that he wishes to address the tribunal or chairman with a view to the tribunal or chairman making an order under rule 54(2) applicable to this stage of the proceedings to exclude the claimant;

rule 4(3)(d) (grounds for the response) of Schedule 1 shall not apply and paragraphs (2) and (3) of this rule shall apply instead.

(2) In a case falling within paragraph (1)(b), if the tribunal or chairman decides not to make an order under rule 54(2), the respondent shall within 28 days of the decision present to the Employment Tribunal Office the written grounds on which he resists the claim. On receiving the written grounds the Secretary shall send a copy of them to all other parties and they shall be treated as part of the response.

(3) In a case falling within paragraph (1)(b) where the tribunal or chairman makes the order, or in a case falling within paragraph (1)(a), the respondent shall with 44 days of the direction or order being made, present to the Employment Tribunal Office (and, where applicable, to the special advocate) the written grounds on which he resists the claim and they shall be treated as part of the response.

(4) The time limits in paragraphs (2) and (3) may be extended if it is just and equitable to do so and if an application is presented to the Employment Tribunal Office before the expiry of the relevant time limit. The application must explain why the respondent cannot comply with the time limit.

Serving of documents by the Secretary

4.—(1) The Secretary shall not send a copy of the response or grounds for the response to any person excluded from all or part of the proceedings by virtue of a direction or order given or made under rule 54.

(2) Where a Minister of the Crown has informed the Secretary in accordance with rule 54(3) that he wishes to address the tribunal or chairman with a view to an order being made under rule 54(2) (a) to exclude the claimant's representative from all or part of the proceedings, the Secretary shall

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not at any time before the tribunal or chairman has considered the Minister's representations, send a copy of the response or the grounds for the response to any person who may be excluded from all or part of the proceedings by such an order if it were made.

Default judgment

5. Rule 8(1) (default judgments) of Schedule 1 shall apply in relation to the time limit for presenting a response, but it shall not apply in relation to the time limits in paragraphs (2) and (3) of rule 3 in this Schedule.

Witness orders and disclosure of documents

6.—(1) Where —

- (a) a Minister has issued a direction or the tribunal or a chairman has made an order under rule 54 to exclude a claimant or his representative from all or part of the proceedings; and
- (b) a chairman or the tribunal is considering whether to make, or has made, an order described in rule 10(2)(c) or (d) of Schedule 1 (requiring a person to attend and give evidence or to produce documents) or under rule 8 of Schedule 3 or rule 7 of Schedule 4;

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal or chairman objecting to the imposition of a requirement described in rule 10(2)(c) or (d) of Schedule 1 or under Schedules 3 or 4. If such an order has been made the Minister may make an application to vary or set aside the order.

(2) The tribunal or chairman shall hear and determine the Minister's application in private and the Minister shall be entitled to address the tribunal or chairman. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to all parties.

Case management discussions and pre-hearing reviews

7.—(1) Rule 14(4) (hearings – general) of Schedule 1 shall be modified in accordance with paragraph (2).

(2) In proceedings in which a special advocate has been appointed in respect of the claimant, if the claimant has been excluded from a case management discussion or a pre-hearing review, at such a hearing the claimant shall not have the right to advance oral argument, but oral argument may be advanced on the claimant's behalf by the special advocate.

Special advocate

8.—(1) In any proceedings in which there is an excluded person the tribunal or chairman shall inform the Attorney General (or in Scotland, the Advocate General) of the proceedings before it with a view to the Attorney General (or the Advocate General, in Scotland), if he thinks it fit to do so, appointing a special advocate to represent the interests of the claimant in respect of those parts of the proceedings from which —

- (a) any representative of his is excluded;
- (b) both he and his representative are excluded; or
- (c) he is excluded, where he does not have a representative.

(2) A special advocate shall have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 or shall be an advocate or a solicitor admitted in Scotland.

(3) Where the excluded person is the claimant, he shall be permitted to make a statement to the tribunal or chairman before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.

(4) Except in accordance with paragraphs (5) to (7), the special advocate may not communicate directly or indirectly with any person (including an excluded person) —

- (a) (except in the case of the tribunal, chairman and the respondent) on any matter contained in the grounds for the response referred to in rule 3(3);
- (b) (except in the case of a person who was present) on any matter discussed or referred to during any part of the proceedings in which the tribunal or chairman sat in private in accordance with a direction or an order given or made under rule 54.

(5) The special advocate may apply for orders from the tribunal or chairman authorising him to seek instructions from, or otherwise to communicate with, an excluded person —

- (a) on any matter contained in the grounds for the response referred to in rule 3(3); or
- (b) on any matter discussed or referred to during any part of the proceedings in which the tribunal or chairman sat in private in accordance with a direction or an order given or made under rule 54.

(6) An application under paragraph (5) shall be made in writing to the Employment Tribunal Office and shall include the title of the proceedings and the grounds for the application.

(7) The Secretary shall notify the Minister of an application under paragraph (5) and the Minister shall be entitled to address the tribunal or chairman on the application.

(8) In these rules and those in Schedule 1, in any case in which a special advocate has been appointed to represent the interests of the claimant in accordance with paragraph (1), any reference to a party shall (save in those references specified in paragraph (9)) include the special advocate.

(9) The following references to “party” or “parties” shall not include the special advocate —

- (a) regulation 9(3);
- (b) in Schedule 1, rule 2(2)(b), 9, 10(2)(r), 10(3), the first two references in rule 11(4), 11(5), 18(7), 20, 22, 23, 27(3), 27(5), 29(3), 30(6)(f), 33(1), 34(2), all references in rule 38 save that in 38(10), 39, 40, 41, all references in rule 42 save that in rule 42(8), 44 to 48, 51, 54(1), the first reference in rule 54(3), 56(3), 61(3), 61(4)(a) and (b), and 61(7);
- (c) in Schedule 4, rule 5(b), 6(5) and 10; and
- (d) in Schedule 5, rule 4(b).

Hearings

9.—(1) Any hearing of or in connection with a claim shall, subject to any direction of a Minister of the Crown or order of a tribunal or chairman under rule 54 that all or part of the proceedings are to take place in private and subject to rule 16 of Schedule 1, take place in public.

(2) A member of the Council on Tribunals shall not be entitled to attend any hearing taking place in private in his capacity as member where the hearing is taking place in private under a direction of a Minister of the Crown or an order of a tribunal or chairman under rule 54.

(3) Subject to any direction of a Minister of the Crown or order of a tribunal or chairman under rule 54, a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal at a Hearing.

Reasons in national security proceedings

10.—(1) This rule applies to written reasons given under rule 30 of Schedule 1 for a judgment or order made by the tribunal or chairman in national security proceedings.

(2) Before the Secretary sends a copy of the written reasons (“the full written reasons”) to any party, or enters them in the Register under rule 32 of Schedule 1, he shall send a copy of the full written reasons to the Minister.

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(3) If the Minister considers it expedient in the interests of national security and he has given a direction or the tribunal or a chairman has made an order under rule 54 in those proceedings, the Minister may —

- (a) direct the tribunal or chairman that the full written reasons shall not be disclosed to persons specified in the direction, and to prepare a further document (“the edited reasons”) setting out the reasons for the judgment or order, but with the omission of such of the information as is specified in the direction;
- (b) direct the tribunal or chairman that the full written reasons shall not be disclosed to persons specified in the direction, but that no further document setting out the tribunal or chairman’s reasons should be prepared.

(4) Where the Minister has directed the tribunal or chairman in accordance with paragraph 3(a), the edited reasons shall be signed by the chairman and initialled in each place where an omission has been made.

(5) Where a direction has been made under paragraph (3)(a), the Secretary shall —

- (a) send a copy of the edited reasons referred to in paragraph (3)(a) to any person specified in the direction and to the persons listed in paragraph (7);
- (b) enter the edited reasons in the Register, but omit from the Register the full written reasons; and
- (c) send a copy of the full written reasons to the persons listed in paragraph (7).

(6) Where a direction has been made under paragraph (3)(b), the Secretary shall send a copy of the full written reasons to the persons listed in paragraph (7), but he shall not enter the full written reasons in the Register.

(7) The persons to whom full written reasons should be sent in accordance with paragraph (5) or (6) are —

- (a) the respondent;
- (b) the claimant or the claimant’s representative if they were not specified in the direction made under paragraph (3);
- (c) if applicable, the special advocate;
- (d) where the proceedings were referred to the tribunal by a court, to that court; and
- (e) where there are proceedings before a superior court (or in Scotland, an appellate court) relating to the decision in question, to that court.

Correction of written reasons

11. Where written reasons (whether “full” or “edited”) have been omitted from the Register in accordance with rule 10 and they are corrected by certificate under rule 37 of Schedule 1, the Secretary shall send a copy of the corrected reasons to the same persons who had been sent the reasons in accordance with rule 10.

Review of judgments or decisions

12. In rule 34(3) of Schedule 1 (review of other judgments and decisions), the reference in sub-paragraph (c) to decisions being made in the absence of a party does not include reference to decisions being made in the absence of a party where this is done in accordance with a direction given or an order made under rule 54.