

## SCHEDULES

### SCHEDULE 8

Article 38.

#### NATIONAL SECURITY

1. The following shall be substituted for Article 238 of the Employment Rights Order (national security)—

**“National security**

**238.** Part VA and Article 70B do not apply in relation to employment for the purposes of—

- (a) the Security Service; or
- (b) the Secret Intelligence Service.”.

2. Article 6(7) of the Industrial Tribunals (Northern Ireland) Order 1996 (composition of tribunal: national security) shall cease to have effect.

3. The following shall be substituted for Article 12 of that Order (national security, &.)—

**“National security**

**12.—(1)** If on a complaint under—

- (a) Article 74 of the Employment Rights Order (detriment: trade union membership),  
or
- (b) Article 145 of that Order (unfair dismissal),

it is shown that the action complained of was taken for the purpose of safeguarding national security, the industrial tribunal shall dismiss the complaint.

(2) Industrial tribunal procedure regulations may make provision about the composition of the tribunal (including provision disapplying or modifying Article 6) for the purposes of proceedings in relation to which—

- (a) a direction is given under paragraph (3), or
- (b) an order is made under paragraph (4).

(3) A direction may be given under this paragraph by the Secretary of State if—

- (a) it relates to particular Crown employment proceedings, and
- (b) the Secretary of State considers it expedient in the interests of national security.

(4) An order may be made under this paragraph by the President of the Industrial Tribunals and the Fair Employment Tribunal in relation to particular proceedings if he considers it expedient in the interests of national security.

(5) Industrial tribunal procedure regulations may make provision enabling the Secretary of State, 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;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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) Industrial 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 paragraph (5)(a) to (e).
- (7) In relation to cases where a person has been excluded by virtue of paragraph (5)(b) or (c) or (6), industrial tribunal procedure regulations may make provision—
- (a) for the appointment by the Attorney General for Northern Ireland 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 Article 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.

### **Confidential information**

**12A.**—(1) Industrial tribunal procedure regulations may enable an industrial 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 statutory provision,
- (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 Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, cause substantial injury to any undertaking of his or in which he works.

(2) The reference in paragraph (1)(c) to any undertaking of a person or in which he works shall be construed, in relation to a person in Crown employment, as a reference to the national interest.

### **Restriction of publicity in cases involving national security**

**12B.**—(1) This Article applies where a tribunal has been directed under Article 12(5) or has determined under Article 12(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 Article 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 Article 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) A reference in this Article 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.”.