

## SCHEDULE 2

Regulation 17(2)(a)

### THE INDUSTRIAL TRIBUNALS (NATIONAL SECURITY) RULES OF PROCEDURE 2020

#### **Application of Schedule 2**

1.—(1) Subject to paragraph (2) this Schedule applies to industrial tribunal proceedings in relation to which a direction is given, or order is made, under rule 91 (national security) and modifies the rules in Schedule 1 in relation to such proceedings.

(2) Rule 5 of this Schedule applies to both industrial tribunals and Fair Employment Tribunal proceedings.

(3) Except where otherwise provided, references in this Schedule to rule numbers are to those in Schedule 1.

(4) The definitions in rule 1 apply to terms in this Schedule and in this Schedule—

“excluded person” means, in relation to any proceedings, a person who has been excluded from all or part of the proceedings by virtue of a direction under rule 91(1)(b) or an order under rule 91(2)(a) (read with rule 91(1)(b)).

#### **Serving of documents**

2. The Secretary shall not send a copy of the response to any excluded person.

#### **Witness orders and disclosure of documents**

3.—(1) Where a person or their representative has been excluded under rule 91 from all or part of the proceedings and a tribunal is considering whether to make an order under rule 27(1)(a) (documents and evidence), the Secretary of State (whether a party to the proceedings or otherwise) may make an application to the tribunal objecting to that order. If such an order has been made, the Secretary of State may make an application to vary or set aside the order.

(2) The tribunal shall hear and determine the Secretary of State’s application in private and the Secretary of State shall be entitled to address the tribunal.

#### **Special advocate**

4.—(1) The tribunal shall inform the Advocate General for Northern Ireland if a party becomes an excluded person.

(2) The Advocate General for Northern Ireland may appoint a special advocate to represent the interests of a person in respect of those parts of the proceedings from which—

- (a) a person’s representative is excluded;
- (b) a person and their representative are excluded;
- (c) a person is excluded and is unrepresented.

(3) A special advocate shall be—

- (a) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland;
- (b) a person who has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales or all proceedings in county courts or magistrates’ courts, or
- (c) an advocate or a solicitor admitted in Scotland.

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

(4) An excluded person (where that person is a party) may make a statement to the tribunal before the commencement of the proceedings or the relevant part of the proceedings.

(5) The special advocate may communicate, directly or indirectly, with an excluded person at any time before receiving material from the Secretary of State in relation to which the Secretary of State states an objection to disclosure to the excluded person (“closed material”).

(6) After receiving closed material, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (7) or (9) or an order of the tribunal.

(7) The special advocate may communicate about the proceedings with—

- (a) the tribunal;
- (b) the Secretary of State, or a representative of the Secretary of State;
- (c) the Advocate General for Northern Ireland, or a representative of the Advocate General for Northern Ireland;
- (d) any other person, except for an excluded person or a representative of that person, with whom it is necessary for administrative purposes to communicate about matters not connected with the substance of the proceedings.

(8) The special advocate may apply for an order from the tribunal to authorise communication with an excluded person or with any other person and if such an application is made—

- (a) the Secretary must notify the Secretary of State of the request; and
- (b) the Secretary of State may, within a period specified by the tribunal present to the tribunal and serve on the special advocate notice of any objection to the proposed communication.

(9) After the special advocate has received closed material, an excluded person may only communicate with the special advocate in writing and the special advocate must not reply to the communication, except that the special advocate may send a written acknowledgment of receipt.

(10) References in these Regulations and Schedules 1 and 2 to a party shall include any special advocate appointed in particular proceedings, save that the references to “party” or “parties” in rules 3, 7(c), 20, 28, 30(2) and (3), the first reference in rule 32, 33 to 35, 41, 59, 71 to 81, 83, 94 and 96(3) shall not include the special advocate.

## **Hearings**

5. Subject to any order under rule 44 (privacy and restrictions on disclosure) or any direction or order under rules 91 and 92 (national security), any hearing shall take place in public, and any party may attend and participate in the hearing.

## **Reasons in national security proceedings**

6.—(1) The Secretary shall send a copy of the written reasons given under rule 57 to the Secretary of State and allow 42 days for the Secretary of State to make a direction under paragraph (3) before sending them to any party or entering them onto the register.

(2) If the tribunal considers it expedient in the interests of national security, it may by order take steps to keep secret all or part of the written reasons.

(3) If the Secretary of State considers it expedient in the interests of national security, the Secretary of State may direct that the written reasons—

- (a) shall not be disclosed to specified persons and require the tribunal to prepare a further document which sets out the reasons for the decision, but omits specified information (“the edited reasons”);

- (b) shall not be disclosed to specified persons and that no further document setting out the reasons for the decision should be prepared.
- (4) Where the Secretary of State has directed the tribunal to prepare edited reasons, the employment judge shall initial each omission.
- (5) Where a direction has been made under paragraph (3)(a), the Secretary shall—
  - (a) send the edited reasons to the specified persons;
  - (b) send the edited reasons and the written reasons to the relevant persons listed in paragraph (7); and
  - (c) where the written reasons relate to a judgment, enter the edited reasons on the register but not enter the written reasons on the register.
- (6) Where a direction has been made under paragraph (3)(b), the Secretary shall send the written reasons to the relevant persons listed in paragraph (7), but not enter the written reasons on the register.
- (7) The relevant persons are—
  - (a) the respondent or the respondent's representative, provided that they were not specified in the direction made under paragraph (3);
  - (b) the claimant or the claimant's representative, provided that they were not specified in the direction made under paragraph (3);
  - (c) any special advocate appointed in the proceedings; and
  - (d) where the proceedings were referred to the tribunal by a court, to that court.
- (8) Where written reasons or edited reasons are corrected under rule 63, the Secretary shall send a copy of the corrected reasons to the same persons who had been sent the reasons.