

SCHEDULE 3

THE EMPLOYMENT TRIBUNALS (EQUAL VALUE) COMPLEMENTARY RULES OF PROCEDURE *For use only in proceedings involving an equal value claim*

PART II

—national security cases

Modification of rule 4 of Schedule 1

1. At the end of rule 4 of Schedule 1 (case management) insert—

“(9) Where—

- (a) a Minister has at any stage issued a direction under rule 8(1)(b) or (c) (exclusion of applicant or his representative), or the tribunal has at any stage made an order under rule 8(2)(a) read with 8(1)(b) or (c), and
- (b) the tribunal (whether on application of a party or of its own motion) is considering whether to impose, or has imposed, a requirement under paragraph (1), (5) or (5A) on any person,

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal objecting to the imposition of the requirement under paragraph (1), (5) or (5A), or, where a requirement has been imposed, an application to vary or set aside the requirement, as the case may be. The tribunal shall hear and determine the Minister’s application in private and the Minister shall be entitled to address the tribunal thereon. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to each party.”

Insertion of rule 7B into Schedule 1

2. For rule 7B of Schedule 1 (as referred to in paragraph 4 of Schedule 2), substitute—

“Reasons for the tribunal’s decision in national security cases

7B.—(1) This rule applies to the document setting out the reasons for the tribunal’s decision prepared under rule 12(3), and the report (if any) of an expert received by the tribunal in the course of the proceedings, in any particular Crown employment proceedings in which a direction of a Minister of the Crown has been given under rule 8(1)(a), (b) or (c), or an order of the tribunal has been made under rule 8(2)(a) read with 8(1)(a), (b) or (c).

(2) Before the Secretary enters the document referred to in rule 12(3), and the copy of the report referred to in paragraph (1), in the Register he shall send a copy of those documents to the Minister.

(3) If the Minister considers it expedient in the interests of national security he may—

- (a) direct the tribunal that the document referred to in rule 12(3) and the report referred to in paragraph (1) shall not be disclosed to any person who was excluded from all or part of the proceedings;
- (b) direct the tribunal to prepare a further document setting out the reasons for its decision but with the omission of such of the reasons as are specified in the direction;

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- (c) direct the tribunal that no further document setting out the tribunal's reasons for its decision should be prepared;
 - (d) direct the tribunal that a further copy of the report referred to in paragraph (1) be prepared, with the omission of such parts of the report as are specified in the direction;
 - (e) direct the tribunal that no further report referred to in paragraph (1) be prepared.
- (4) Where the Minister has directed the tribunal in accordance with paragraph (3)(b) or (d), any document prepared pursuant to that direction shall be signed by the chairman and marked in each place where an omission has been made.”

Modification of rule 11 of Schedule 1

paragraph 2 of rule 11 of Schedule 1 (procedure) substitute—

“(2) Subject to paragraphs (1), (2A), (2B), (2C) and (2D), and to any direction of a Minister of the Crown under rule 8(1)(b) or (c) or order of the tribunal under rule 8(2)(a) read with 8(1)(b) or (c), at the hearing of the originating application a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.”

Modification of rule 12 of Schedule 1

4. In rule 12 of Schedule 1 (decision of tribunal), after paragraph (5), insert—

“(5A) Where the Minister has directed the tribunal as referred to in rule 7B(3)(b) or (d) (keeping secret certain reasons for the tribunal's decision or certain parts of the expert's report), the clerk shall transmit any document prepared pursuant to that direction to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to the excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them, the document referred to in paragraph (2) and any document prepared pursuant to the direction under rule 7B(3)(b) or (d) in accordance with paragraph (5D).

(5B) Where the Minister has directed the tribunal as referred to in rule 7B(3)(c) or (e) (keeping secret all of the reasons for the tribunal's decision or all of the expert's report), the Secretary shall enter the document referred to in paragraph (2) in the Register and shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them and of the document referred to in paragraph (2) in accordance with paragraph (5D).

(5C) Where—

- (a) a Minister of the Crown has given a direction under rule 8(1)(d) (concealing identity of witness);
- (b) the tribunal has made an order under rule 8(2)(a) read with 8(1)(d); or
- (c) the tribunal has taken steps under rule 8(2)(c) to keep secret all or part of the reasons for its decision;

any further document prepared pursuant to that direction or order, or pursuant to those steps, as the case may be, shall be signed by the chairman and marked in each place where an omission has been made. The clerk shall transmit such further document to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register

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and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them, the document referred to in paragraph (2) and any document prepared pursuant to the direction, order or steps referred to in sub-paragraphs (a) to (c) in accordance with paragraph (5D).

(5D) Any documents required by paragraphs (5A) to (5C) to be sent in accordance with this paragraph shall be sent by the Secretary to—

- (a) the respondent,
- (b) such of the applicant or the applicant's representatives as was not an excluded person,
- (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 relating to the decision in question, to that court."