

SCHEDULE 2

Regulation 13(2)

THE EMPLOYMENT TRIBUNALS (NATIONAL SECURITY) RULES OF PROCEDURE

Application of Schedule 2

1.—(1) This Schedule applies to proceedings in relation to which a direction is given, or order is made, under rule 94 and modifies the rules in Schedule 1 in relation to such proceedings.

(2) References in this Schedule to rule numbers are to those in Schedule 1.

(3) 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 94(1)(b) or an order under rule 94(2)(a) (read with rule 94(1)(b)).

Serving of documents

2. The Tribunal 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 94 from all or part of the proceedings and a Tribunal is considering whether to make an order under rule 31 or 32, a Minister (whether or not he is a party to the proceedings) may make an application to the Tribunal objecting to that order. If such an order has been made, the Minister may make an application to vary or set aside the order.

(2) The Tribunal shall hear and determine the Minister’s application in private and the Minister shall be entitled to address the Tribunal.

Special advocate

4.—(1) The Tribunal shall inform the relevant Law Officer if a party becomes an excluded person. For the purposes of this rule, “relevant Law Officer” means, in relation to England and Wales, the Attorney General, and, in relation to Scotland, the Advocate General.

(2) The relevant Law Officer 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 person who has a right of audience in relation to any class of proceedings in any part of the Senior Courts or all proceedings in county courts or magistrates’ courts, or shall be an advocate or a solicitor admitted in Scotland.

(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 a Minister in relation to which the Minister 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.

Status: This is the original version (as it was originally made).

- (7) The special advocate may communicate about the proceedings with—
- (a) the Tribunal;
 - (b) the Minister, or their representative;
 - (c) the relevant Law Officer, or their representative;
 - (d) any other person, except for an excluded person or his representative, 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 Tribunal must notify the Minister of the request; and
 - (b) the Minister 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 to the legal representative.
- (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, 6(c), 22, 26, 34, 36(2), 36(3), the first reference in rule 37, 38, 39, 40, 41, 45, 47, 64, 74 to 84, 86, 96 and 98(3) shall not include the special advocate.

Hearings

- 5.—**(1) Subject to any order under rule 50 or any direction or order under rule 94, any hearing shall take place in public, and any party may attend and participate in the hearing.
- (2) A member of the Administrative Justice and Tribunals Council shall not be entitled to attend any hearing conducted in private.

Reasons in national security proceedings

- 6.—**(1) The Tribunal shall send a copy of the written reasons given under rule 62 to the Minister and allow 42 days for the Minister to make a direction under paragraph (3) below 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 Minister considers it expedient in the interests of national security, the Minister 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 Minister 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 Tribunal 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 Tribunal 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 69, the Tribunal shall send a copy of the corrected reasons to the same persons who had been sent the reasons.