

code of practice

Disclosure of information to trade unions for collective bargaining purposes

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Labour Relations
AGENCY
Improving Employment Relations



This Code is issued under Articles 90(10–13) of the Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") and comes into operation by order of the Department for Employment and Learning on 12th November 2006.

It revises the Labour Relations Agency Code of Practice on Disclosure of Information to Trade Unions for Collective Bargaining Purposes which came into operation on 9th October 1978 and was issued under Article 14A(4) of the Industrial Relations (Northern Ireland) Order 1976 (since replaced by Article 90(4) of the 1992 Order).

In accordance with Article 90(10) of the 1992 Order, this revised Code makes minor changes only to the earlier Code in order to bring it into conformity with statutory provisions subsequent to that Code. Some minor grammatical and stylistic changes have also been made to modernise the Code.

In this revised Code, text in bold type summarises statutory provisions on the disclosure of information, whilst practical guidance is set out in ordinary type. Whilst every care has been taken to ensure that the summary of the statutory provisions included in the Code is accurate it should be noted that only the courts can interpret the law authoritatively.





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INTRODUCTION

1. The Labour Relations Agency ("the Agency") may issue Codes of Practice containing such practical guidance as the Agency thinks fit for the purpose of promoting the improvement of industrial relations. In particular, the Agency has a duty to provide practical guidance on the application of Articles 39 and 40 of the Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") in relation to the disclosure of information by employers to trade unions for the purpose of collective bargaining.
2. The 1992 Order and the Code apply to employers operating in both the public and private sectors. Articles 39 and 40 of the 1992 Order and the Code do not apply to collective bargaining between employers' associations and trade unions, although the parties concerned may wish to follow the guidelines contained in the Code.
3. **The information which employers may have a duty to disclose under Article 39 is information which would be disclosed in accordance with good industrial relations practice. In determining what would be in accordance with good industrial relations practice regard is to be had to any relevant provisions of the Code.** However, the Code imposes no legal obligations on an employer to disclose any specific item of information. Failure to observe the Code does not by itself render anyone liable to proceedings, but the 1992 Order requires any relevant provisions to be taken into account in proceedings before the Industrial Court ("the Court")*.

*Industrial Relations (Northern Ireland) Order 1992, Article 90(16)



THE LEGISLATIVE PROVISIONS

(Articles 39 to 43 of the Industrial Relations (Northern Ireland) Order 1992)

4. The 1992 Order places a general duty on an employer to disclose at all stages of collective bargaining, information requested by representatives of independent trade unions. The union must be recognised by the employer for collective bargaining purposes and the collective bargaining must be about matters and in relation to descriptions of workers in respect of which the union is recognised. The representative of the union is an official or other person authorised by the union to carry on such collective bargaining.
5. The information requested has to be in the employer's possession, or in the possession of any associated employer, and must relate to the employer's undertaking. The information to be disclosed is that without which a trade union representative would be impeded to a material extent in bargaining and which it would be in accordance with good industrial relations practice to disclose for the purpose of collective bargaining. In determining what is in accordance with good industrial relations practice, any relevant provisions of this Code are to be taken into account.
6. No employer is required to disclose any information which:
 - would be against the interests of national security, public safety or public order;
 - would contravene a prohibition imposed by or under an enactment;
 - was given to an employer in confidence, or was obtained by the employer in consequence of the confidence reposed in him/her by another person;
 - relates to an individual unless he has consented to its disclosure;
 - would cause substantial injury to the undertaking for reasons other than its effect on collective bargaining; or
 - was obtained for the purpose of any legal proceedings.
7. In providing information the employer is not required to produce original documents for inspection or copying. Nor is he/she required to compile or assemble information which would entail work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining. The union representative can request that the information be given in writing by the employer or be confirmed in writing.



Similarly, an employer can ask the trade union representative to make the request for information in writing or confirm it in writing.

8. If the trade union considers that an employer has failed to disclose to its representatives information which he/she was required to disclose by Article 39 of the 1992 Order, or to confirm such information in writing in accordance with that Article, it may make a complaint to the Agency. On receipt of such a complaint the Agency may seek to promote a settlement by conciliation. If conciliation does not lead to a settlement of the complaint the Agency shall refer the complaint to the Court which shall proceed to hear and determine the complaint. If the complaint is upheld by the Court it is required to specify the information that should have been disclosed or confirmed in writing, the date the employer failed to disclose, or confirm in writing, any of the information and a period of time within which the employer ought to disclose the information, or confirm it in writing. If the employer does not disclose the information, or confirm it in writing, within the specified time the union may present a further complaint to the

Agency and may also present a claim for improved terms and conditions. The Agency will refer both the further complaint and the claim for terms and conditions to the Court. If the further complaint is upheld by the Court an award, which would have effect as part of the contract of employment, may be made against the employer on the terms and conditions specified in the claim, or other terms and conditions which the Court considers appropriate. Any such award may be made only in respect of a description of employees, and comprise only terms and conditions relating to matters, in respect of which the trade union is recognised by the employer.



PROVISION OF INFORMATION FOR COLLECTIVE BARGAINING

9. The absence of relevant information about an employer's undertaking may to a material extent impede trade unions in collective bargaining, particularly if the information would influence the formulation, presentation or pursuance of a claim, or the conclusion of an agreement. The provision of relevant information in such circumstances would be in accordance with good industrial relations practice.
10. To determine what information will be relevant negotiators should take account of the subject matter of the negotiations and the issues raised during them; the level at which negotiations take place (department, plant, division, or company level); the size of the company; and the type of business the company is engaged in.
11. Collective bargaining within an undertaking can range from negotiations on specific matters arising daily at the workplace and affecting only a particular section or sections of the workforce, to extensive periodic negotiations on terms and conditions of employment affecting the whole workforce in multi-plant companies. The relevant information and the depth, detail and form in which it could be presented to negotiators will vary accordingly. Consequently, it is not possible to compile a list of items that should be disclosed in all circumstances. Some examples of information relating to the undertaking which could be relevant in certain collective bargaining situations are given below:
- (i) **Pay and benefits:** principles and structure of payment systems; job evaluation systems and grading criteria; earnings and hours analysed according to work-group, grade, plant, gender, out-workers and home workers, department or division, giving, where appropriate, distributions and make-up of pay showing any additions to basic rate or salary; total pay bill; details of fringe benefits and non-wage labour costs.
 - (ii) **Conditions of service:** policies on recruitment, redeployment, redundancy, training, equal opportunity, and promotion; appraisal systems; health; welfare and safety matters.
 - (iii) **Human resource information:** numbers employed analysed according to grade, department, location, age and gender; labour



turnover; absenteeism; overtime and short-time; resourcing standards; planned changes in work methods, materials, equipment or organisation; available human resource plans; investment plans.

- (iv) **Performance:** productivity and efficiency data; savings from increased productivity and output; return on capital invested; sales and state of order book.
- (v) **Financial:** cost structures; gross and net profits; sources of earnings; assets; liabilities; allocation of profits; details of government financial assistance; transfer prices; loans to parent or subsidiary companies and interest charged.

12. These examples are not intended to represent a checklist of information that should be provided for all negotiations. Nor are they meant to be an exhaustive list of types of information as other items may be relevant in particular negotiations.



RESTRICTIONS ON THE DUTY TO DISCLOSE

13. Trade Unions and employers should be aware of the restrictions on the general duty to disclose information for collective bargaining.*
14. Some examples of information which if disclosed in particular circumstances might cause substantial injury are: cost information on individual products; detailed analysis of proposed investment, marketing or pricing policies; and price quotas or the make-up of tender prices. Information which has to be made available publicly, for example under the Northern Ireland Company Act, would not fall into this category.
15. Substantial damage may occur if, for example, certain customers would be lost to competitors, or suppliers would refuse to supply necessary materials, or the ability to raise funds to finance the company would be seriously impaired as a result of disclosing certain information. The burden of establishing a claim that disclosure of certain information would cause substantial injury lies with the employer.

*Industrial Relations (Northern Ireland) Order 1992, Article 40. See also paragraphs 6 and 7 of this Code.



TRADE UNIONS' RESPONSIBILITIES

16. Trade unions should identify and request the information they require for collective bargaining in advance of negotiations whenever practicable. Misunderstandings can be avoided, costs reduced, and time saved, if requests state as precisely as possible all the information required, and the reasons why the information is considered relevant. Requests should conform to an agreed procedure. A reasonable period of time should be allowed for employers to consider a request and to reply.
17. Trade unions should keep employers informed of the names of the representatives authorised to carry on collective bargaining on their behalf.
18. Where two or more trade unions are recognised by an employer for collective bargaining purposes they should co-ordinate their requests for information whenever possible.
19. Trade unions should review existing training programmes or establish new ones to ensure negotiators are equipped to understand and use information effectively.



EMPLOYERS' RESPONSIBILITIES

20. Employers should aim to be as open and helpful as possible in meeting trade union requests for information. Where a request is refused, the reasons for the refusal should be explained as far as possible to the trade union representatives concerned and be capable of being substantiated should the matter be taken to the Court.
21. Information agreed as relevant to collective bargaining should be made available as soon as possible once a request for the information has been made by an authorised trade union representative. Employers should present information in a form and style which recipients can be reasonably expected to understand.



JOINT ARRANGEMENTS FOR DISCLOSURE OF INFORMATION

22. Employers and trade unions should endeavour to arrive at a joint understanding on how the provisions on the disclosure of information can be implemented most effectively. They should consider what information is likely to be required, what is available, and what could reasonably be made available. Consideration should also be given to the form in which the information will be presented, when it should be presented and to whom. In particular, the parties should endeavour to reach an understanding on what information could most appropriately be provided on a regular basis.
23. Procedures for resolving possible disputes concerning any issues associated with the disclosure of information should be agreed. Where possible such procedures should normally be related to any existing arrangements within the undertaking or industry and the complaint, conciliation and arbitration procedure described in the 1992 Order.*

*Industrial Relations (Northern Ireland) Order 1992, Articles 41 to 43. See also paragraph 8 of this Code.