
STATUTORY INSTRUMENTS

1992 No. 807

The Industrial Relations (Northern Ireland) Order 1992

PART V

DISCLOSURE OF INFORMATION

General duty of employers to disclose information

39.—(1) For the purposes of all the stages of collective bargaining between an employer and representatives of an independent trade union about matters and in relation to descriptions of workers in respect of which the trade union is recognised by that employer, it shall be the duty of the employer, subject to Article 40, to disclose to those representatives on request all such information relating to his undertaking [^{F1}(including information relating to use of agency workers in that undertaking)] as is in his possession, or that of any associated employer, and is both—

- (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining; and
- (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

(2) In this Part—

“recognised”, in relation to a trade union, means recognised by an employer to any extent for the purpose of collective bargaining;

“representative”, in relation to a trade union, means an official or other person authorised by the trade union to carry on such collective bargaining as is referred to in paragraph (1).

(3) Where a request for information is made by trade union representatives under this Article, the request shall, if the employer so requests, be in writing or be confirmed in writing.

(4) In determining, for the purposes of paragraph (1)(b), what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by the Agency under Article 90, but not so as to exclude any other evidence of what that practice is.

(5) Where an employer is required by virtue of this Article to disclose any information to trade union representatives, the disclosure of it shall, if they so request, be in writing or be confirmed in writing.

Paras.(6),(7) rep. by 1993 NI 11

F1 Words in art. 39(1) inserted (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), reg. 23(2), [Sch. 2 para. 3](#)

Restrictions on general duty under Article 39

40.—(1) No employer shall, by virtue of Article 39, be required to disclose—

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- (a) any information the disclosure of which would be against the interests of national security, public safety or public order; or
- (b) any information which he could not disclose without contravening a prohibition imposed by or under a statutory provision; or
- (c) any information which has been communicated to the employer in confidence, or which the employer has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (d) any information relating specifically to an individual, unless he has consented to its being disclosed; or
- (e) any information the disclosure of which would cause substantial injury to the employer's undertaking for reasons other than its effect on collective bargaining; or
- (f) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

and in formulating the provisions of any Code of Practice under Article 90 relating to the disclosure of information, the Agency shall have regard to the provisions of this paragraph.

(2) In the performance of his duty under Article 39 an employer shall not be required—

- (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document; or
- (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

Para.(3) rep. by 1993 NI 11

Complaint of failure to disclose information

41.—(1) An independent trade union may refer to the Agency, in writing in such form as the Agency may require, a complaint that an employer has failed to disclose to representatives of that trade union information which he was required to disclose to them by Article 39, or to confirm any such information in writing in accordance with paragraph (5) of that Article.

(2) If on receipt of such a complaint the Agency is of the opinion that the complaint is reasonably likely to be settled by conciliation, it shall seek to promote a settlement of the matter.

(3) Where the complaint is not settled or withdrawn and the Agency is of the opinion that—

- (a) the complaint is not reasonably likely to be settled by conciliation; or
- (b) that further attempts at conciliation are unlikely to result in a settlement,

the Agency shall refer the complaint to the Industrial Court.

(4) The Industrial Court shall hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(5) On the hearing of a complaint under this Article any person who the Industrial Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(6) If the Industrial Court finds the complaint wholly or partly well-founded, the declaration shall specify—

- (a) the information in respect of which the Court finds that the complaint is well-founded;

- (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose, or, as the case may be, to confirm in writing, any of the information specified under sub-paragraph (a); and
- (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose, or, as the case may be, to confirm in writing, the information specified under sub-paragraph (a).

(7) On a hearing of a complaint under this Article a certificate signed by or on behalf of the Secretary of State and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security, public safety or public order shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

Further complaint arising from failure to disclose information

42.—(1) At any time after the expiration of the period specified in a declaration under Article 41(6)(c) the trade union may refer to the Agency in writing in such form as the Agency may require, a complaint (hereafter in this Article and Article 43 referred to as a “further complaint”) that the employer has failed to disclose, or, as the case may be, to confirm in writing, to representatives of that union information specified in the declaration under Article 41(6)(a).

(2) On receipt of a further complaint the Agency shall refer the complaint to the Industrial Court which shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(3) On the hearing of a further complaint under this Article any person who the Industrial Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(4) If the Industrial Court finds the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Court finds that the complaint is well-founded.

Determination of claim and award

43.—(1) On or after referring a further complaint under Article 42, the trade union may refer to the Agency in writing, a claim in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim and the Agency shall refer the claim to the Industrial Court.

(2) The right to refer a claim under paragraph (1) shall expire, or, as the case may be, a claim so referred shall be treated as withdrawn, if at any time before the Industrial Court makes an award under this Article the employer discloses, or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under Article 41(6)(a) or, as the case may be, Article 42(4).

(3) If the Industrial Court finds, or has found, the further complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—

- (a) the terms and conditions specified in the claim; or
- (b) other terms and conditions which the Court considers appropriate.

(4) The date specified in an award under paragraph (3) may be a date earlier than that on which the award is made but shall not be earlier than the date specified in accordance with Article 41(6)(b) in the declaration made by the Industrial Court on the original complaint.

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(5) An award under paragraph (3) shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters, in respect of which the trade union making the claim is recognised by the employer.

(6) Any terms and conditions which by an award under this Article the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under this Article;
- (b) by a collective agreement between the employer and the union for the time being representing that employee; or
- (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

(7) Where—

- (a) by virtue of any statutory provision, other than one contained in this Article, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that statutory provision; and
- (b) by virtue of an award under this Article any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this Article, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(8) No award shall be made under this Article in respect of any terms and conditions of employment which are fixed by virtue of any statutory provision.

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Changes and effects yet to be applied to :

- Instrument excl by [1994 c. 33 s. 127\(8\)](#)
- Instrument restr (pt retrospect) by [1994 c. 33 s. 126\(1\)s. 126\(2\)\(b\)\(4\)](#)