
STATUTORY INSTRUMENTS

2004 No. 3426

The Information and Consultation
of Employees Regulations 2004

PART VII

CONFIDENTIAL INFORMATION

Breach of statutory duty

25.—(1) A person to whom the employer, pursuant to his obligations under these Regulations, entrusts any information or document on terms requiring it to be held in confidence shall not disclose that information or document except, where the terms permit him to do so, in accordance with those terms.

(2) In this regulation a person referred to in paragraph (1) to whom information or a document is entrusted is referred to as a “recipient”.

(3) The obligation to comply with paragraph (1) is a duty owed to the employer, and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breaches of statutory duty).

(4) Paragraph (3) shall not affect any legal liability which any person may incur by disclosing the information or document, or any right which any person may have in relation to such disclosure otherwise than under this regulation.

(5) No action shall lie under paragraph (3) where the recipient reasonably believed the disclosure to be a “protected disclosure” within the meaning given to that expression by section 43A of the 1996 Act⁽¹⁾.

(6) A recipient to whom the employer has entrusted any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information or document in confidence.

(7) If the CAC considers, on an application under paragraph (6), that the disclosure of the information or document by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence.

(8) If a declaration is made under paragraph (7), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under paragraph (6), or to any other recipient, on terms requiring it to be held in confidence.

Withholding of information by the employer

26.—(1) The employer is not required to disclose any information or document to a person for the purposes of these Regulations where the nature of the information or document is such that,

(1) Section 43A of the 1996 Act was inserted by the Public Interest Disclosure Act 1998 (c. 23), section 1.

according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking.

- (2) If there is a dispute between the employer and—
 - (a) where information and consultation representatives have been elected or appointed, such a representative; or
 - (b) where no information and consultation representatives have been elected or appointed, an employee or an employees' representative,

as to whether the nature of the information or document which the employer has failed to provide is such as is described in paragraph (1), the employer or a person referred to in sub-paragraph (a) or (b) may apply to the CAC for a declaration as to whether the information or document is of such a nature.

(3) If the CAC makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in paragraph (1), the CAC shall order the employer to disclose the information or document.

- (4) An order under paragraph (3) shall specify—
 - (a) the information or document to be disclosed;
 - (b) the person or persons to whom the information or document is to be disclosed;
 - (c) any terms on which the information or document is to be disclosed; and
 - (d) the date before which the information or document is to be disclosed.