
STATUTORY INSTRUMENTS

1999 No. 3323

**The Transnational Information and
Consultation of Employees Regulations 1999**

PART VI

CONFIDENTIAL INFORMATION

Breach of statutory duty

23.—(1) A person who is or at any time was—

- (a) a member of a special negotiating body or a European Works Council;
- (b) an information and consultation representative; or
- (c) an expert assisting a special negotiating body, a European Works Council or its select committee, or information and consultation representatives,

shall not disclose any information or document which is or has been in his possession by virtue of his position as described in sub-paragraph (a), (b) or (c) of this paragraph, which the central management has entrusted to him on terms requiring it to be held in confidence.

(2) In this regulation and in regulation 24, a person specified in paragraph (1)(a), (b) or (c) of this regulation is referred to as a “recipient”.

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

(4) Paragraph (3) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (3).

(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⁾ or, as the case may be, Article 67A of the 1996 Order⁽²⁾.

(6) A recipient whom the central management (which is situated in the United Kingdom) has entrusted with 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 central management to impose such a requirement.

(7) If the CAC considers that the disclosure of the information or document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking, it shall make a declaration that it was not reasonable for the central management 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.

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

(2) Article 67A was inserted by the [Public Interest Disclosure \(Northern Ireland\) Order \(S.I. 1998 No. 1763 \(N.I. 17\)\)](#).

Withholding of information by central management

24.—(1) The central management is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking or group of undertakings concerned.

(2) Where there is a dispute between the central management and a recipient as to whether the nature of the information or document which the central management has failed to provide is such as is described in paragraph (1), the central management or a recipient 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, seriously harm the functioning of, or be prejudicial to, the undertaking or group of undertakings concerned, the CAC shall order the central management to disclose the information or document.

(4) An order under paragraph (3) above shall specify—

- (a) the information or document to be disclosed;
- (b) the recipient or recipients 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.