

Disclosure of
information to
trade unions
for collective
bargaining purposes



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This Code, from pages 6 to 29, revises the Acas Code of Practice on Time Off for Trade Union Duties and Activities which came into effect on 5 February 1998. This revised code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid in draft in both Houses of Parliament on 10 February 2003. The revised Code came into effect by order of the Secretary of State on 27 April 2003.

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This revised Code from pages 4 to 11 revises the *Acas Code of Practice on Disclosure of Information to Trade Unions for Collective Bargaining Purposes* which came into effect on 22 August 1977 and was issued under section 6 of the Employment Protection Act 1975 (now section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)).

This revised Code is issued under section 201 of the 1992 Act and was laid before both Houses of Parliament on 28 October 1997. The Code comes into effect by order of the Secretary of State on 5 February 1998.

In accordance with section 201 of the 1992 Act, 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.

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. Under the Trade Union and Labour Relations (Consolidation) Act 1992 the Advisory, Conciliation and Arbitration Service (ACAS) may issue Codes of Practice containing such practical guidance as the Service thinks fit for the purpose of promoting the improvement of industrial relations. In particular, the Service has a duty to provide practical guidance on the information to be disclosed by employers to trade union representatives in accordance with sections 181 and 182 of that Act, for the purposes of collective bargaining.
2. The Act and the Code apply to employers operating in both the public and private sectors of industry. They 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 section 181 is information which it would be in accordance with good industrial relations practice to disclose. 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 Act requires any relevant provisions to be taken into account in proceedings before the Central Arbitration Committee.¹

¹ Trade Union and Labour Relations (Consolidation) Act 1992, sections 181(2)(b), 181(4) and 207(1) and (2).

This Code replaces the Code of Practice on Disclosure of Information to Trade Unions for Collective Bargaining Purposes, issued by the Service in 1977.

Provisions of the Act

4. The Act places a general duty on an employer who recognises an independent trade union to disclose, for the purposes of all stages of collective bargaining about matters, and in relation to descriptions of workers, in respect of which the union is recognised by him, information requested by representatives of the union. 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; 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 by another person; relates to an individual unless he has consented to its disclosure; would cause substantial injury to the undertaking

(or national interest in respect of Crown employment) 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 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 was required to disclose by section 181 of the Act, or to confirm such information in writing in accordance with that section, it may make a complaint to the Central Arbitration Committee. The Committee may ask the Advisory, Conciliation and Arbitration Service to conciliate. If conciliation does not lead to a settlement of the complaint, the Service shall inform the Committee accordingly who shall proceed to hear and determine the complaint. If the complaint is upheld by the Committee, 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 (except in relation to Crown employment and Parliamentary staff) may present a further complaint to the Committee and may also present a claim for improved terms and conditions. If the further

complaint is upheld by the Committee, 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 Committee considers appropriate.

Providing information

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 affecting particular 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 overleaf:

- (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, sex, out-workers and homeworkers, 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) *Manpower*: numbers employed analysed according to grade, department, location, age and sex; labour turnover; absenteeism; overtime and short-time; manning standards; planned changes in work methods, materials, equipment or organisation; available manpower 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 check list 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.²
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 Companies Acts, would not fall into this category.
15. Substantial injury 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.

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.

² Trade Union and Labour Relations (Consolidation) Act 1992, section 182. See paragraphs 6 and 7 of this Code.

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' responsibilities³

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 Central Arbitration Committee.
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 reasonably be expected to understand.

³ The Stock Exchange has drawn attention to the need for employers to consider any obligations which they may have under their Listing Agreement.

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 Act.⁴

⁴ Trade Union and Labour Relations (Consolidation) Act 1992, sections 183 to 185. See paragraph 8 of this Code.



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151 West George Street, Glasgow G2 2JJ

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Commercial Union House,
2-10 Albert Square, Manchester M60 8AD

Pavilion 1, The Matchworks, Speke Road,
Speke, Liverpool L19 2PH

North East

Cross House, Westgate Road,
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Yorkshire and The Humber

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East Midlands

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East of England

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Wales

3 Purbeck House, Lambourne Crescent,
Llanishen, Cardiff CF14 5GJ

London

22nd & 23rd Floors, Euston Tower,
286 Euston Road, London NW1 3JJ

South West

The Waterfront, Welsh Back,
Bristol BS1 4SB

South East

Westminster House, 125 Fleet Road,
Fleet, Hampshire GU51 3QL

Suites 3-5, Business Centre,
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Kent TN12 6EN

Head Office

Brandon House,
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www.acas.org.uk



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