

1977 No. 158

TERMS AND CONDITIONS OF EMPLOYMENT

**The Guarantee Payments (Exemption) (No. 3)
Order 1977**

Made - - - - - *2nd February 1977*

Coming into Operation *2nd February 1977*

Whereas the National Working Rules of the National Joint Council for the Building Industry are a collective agreement which makes provision whereby employees to whom the said agreement relates have a right to guaranteed remuneration:

And whereas the parties to the said collective agreement (whose descriptions are set out in Schedule 1 to this Order) all made application to the Secretary of State under section 28(1) of the Employment Protection Act 1975(a) ("the Act"):

And whereas the Secretary of State, having regard to the provisions of the agreement (which so far as are material are set out in Schedule 2 to this Order) is satisfied that section 22 of the Act should not apply to those employees:

And whereas the said agreement complies with the provisions of section 28(4) of the Act:

Now, therefore, the Secretary of State in exercise of the powers conferred on him as the appropriate Minister under section 28(1) of the Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Guarantee Payments (Exemption) (No. 3) Order 1977 and shall come into operation on 2nd February 1977.

Interpretation

2.—(1) The Interpretation Act 1889(b) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(2) The exempted agreement means the National Working Rules of the National Joint Council for the Building Industry.

Exemption

3. Section 22 of the Act shall not apply to any person who is an employee to whom the exempted agreement relates.

Signed by order of the Secretary of State.

Harold Walker,
Minister of State,
Department of Employment.

2nd February 1977.

(a) 1975 c. 71.

(b) 1889 c. 63.

SCHEDULE 1

PARTIES TO THE COLLECTIVE AGREEMENT

1. *Representing Employers:—*
the National Federation of Building Trades Employers;
the National Federation of Roofing Contractors.
2. *Representing Employees:—*
the Union of Construction, Allied Trades and Technicians;
the Transport and General Workers Union;
the General and Municipal Workers Union;
the Furniture, Timber and Allied Trades Union.

SCHEDULE 2

MATERIAL PROVISIONS OF THE COLLECTIVE AGREEMENT

NATIONAL WORKING RULE 2A—GUARANTEED WEEKLY WAGES

1. *Availability for Work*
'Available for work' means that:
 - 1.1 Unless otherwise specifically instructed by the employer or his representatives each operative shall present himself for work each weekday at the usual starting time of the shop, job or site and shall there remain available for work throughout the normal working hours. Decisions as to when, during the normal working hours, work is to be carried out, interrupted on account of weather conditions or otherwise and resumed, and as to whether some or all of the operatives shall work at any particular time shall be made by the employer or his representative and shall be implicitly observed.
 - 1.2 If in the shop or on the job or site, work is not available for an operative in his own occupation, he shall hold himself ready and willing to perform work in any other suitable building industry occupation or at any other job, site or shop where work is available.
 - 1.3 In cases where abnormal weather conditions interrupt work over a period, suitable arrangements, appropriate to the circumstances of each case, may be made by the employer by which operatives shall register or establish that they are available for work on each day.
2. *Guaranteed Weekly Wage*
 - 2.1 An operative shall be guaranteed payment of his guaranteed minimum weekly earnings comprising the current weekly standard basic rates of wages, guaranteed minimum bonus payment and joint board supplement for the full normal working hours of each complete payweek of the period of employment, whether work is or is not provided by the employer and regardless of temporary stoppages through inclement weather or other causes beyond the control of the parties.

This guarantee is subject to the following conditions:

- (a) that throughout the normal working hours of the payweek the operative is available for work within the meaning of Section 1 of this Rule.
- (b) the guarantee does not apply to weeks of annual holiday or to the winter holiday.
- (c) the guarantee is reduced proportionately for any payweek in which:
 - (i) the operative is engaged after the commencement of the payweek;
 - (ii) the operative's employment terminates before the end of the payweek;
 - (iii) the operative is absent for part of the payweek due to certified sickness or injury; or
 - (iv) the operative is absent for one or more days of winter, public or recognised holiday.
- (d) that where on a job or in a shop collective action is taken by any operatives employed under this agreement, the employer shall at all times use his best endeavours to provide continuity of work for those operatives who are not involved in the dispute and who remain available for work. If, because of the industrial action taken, the employer cannot provide such continuity of work, the provisions of the rule relating to guaranteed time payments shall be suspended until normal working is restored.

2.2 *Loss of Guarantee*

An operative who has not been available for work within the meaning of the preceding paragraph shall not be entitled to the weekly guarantee but shall be entitled only to payment of the appropriate proportion of his guaranteed minimum weekly earnings as defined in clause 2.1 above for half the number of any hours during which, although available for work, he has been prevented from working by inclement weather or other cause beyond the control of the parties.

2.3 *Temporary Lay-off*

Where work is temporarily stopped or is not provided by the employer and a payweek during which the operative actually works is followed by a complete payweek during which, although remaining available for work, he is prevented from performing actual work, he shall be paid for that payweek his guaranteed minimum weekly earnings as defined in clause 2.1 above. Thereafter and while the stoppage of work continues and the operative is similarly prevented from actually working, he may be required by the employer to register as an unemployed person, in which event the provisions of N.W.R.2B.5.4. relating to continuity of employment during temporary stoppage of work shall apply to him.

3. *Handling of Disputes*

A dispute arising under this Rule or concerning payments due under NWRs 5A.6, 5B.3 or 5B.5 may, at the option of the claimant, be referred

to the Advisory, Conciliation and Arbitration Service and/or an industrial tribunal in the event of no decision by the National Conciliation Panel.

NATIONAL WORKING RULE 5—SHIFT WORK AND NIGHT WORK

A.—*Double Day and Three-Shift Working*

6. Where at the commencement or termination of shift working fewer than five shifts can be worked in the normal working week an additional payment is to be made, at plain-time rates, for the time interval by which the actual working hours (other than overtime hours) during which the job is open to an operative (i.e. shift and day working hours together) falls short of the normal working hours for that week.

B.—*Night Work (other than under consecutive shift working)*

3. Where fewer than five nights consecutively are worked by a night gang (excluding work on Saturday and Sunday nights) an additional payment is due to be made, at plain-time rates, for the time interval by which the actual working hours (other than overtime hours) during which the job is open to a night gang worker in a payweek (i.e. night and day working hours together) falls short of the normal working week.

5. *Holiday Periods—Restricted Working Hours*

Subject always to the general overriding principles and provisions of N.W.R.2A, where on the night immediately prior to, or immediately following, a public, winter or other recognised holiday work cannot proceed, provided that the operative would otherwise have been available for work, he shall be paid in respect of that payweek (and excluding any overtime or bonus earnings) at his plain-time rate together with any guaranteed payment under N.W.R.1.2 and the joint board supplement under N.W.R.1.3 for the hours so lost.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order excludes from the operation of section 22 of the Employment Protection Act 1975 employees to whom the National Working Rules of the National Joint Council for the Building Industry relate. Copies of the Rules are available for inspection between 10 a.m. and noon and between 2 p.m. and 5 p.m. on any week-day (except Saturdays) at the offices of the Department of Employment, 8 St James's Square, London, SW1Y 4JB.

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