

1989 No. 1575

TERMS AND CONDITIONS OF EMPLOYMENT

**The Guarantee Payments (Exemption) (No. 25) Order
1989**

Made - - - - - *31st August 1989*

Coming into force *29th September 1989*

Whereas the Working Rule Agreement of the Building and Allied Trades Joint Industrial Council made between the parties described in Schedule 1 to this Order on 14th December 1988 and set out in a document entitled "CONSTITUTION and WORKING RULE AGREEMENT" is a collective agreement ("the collective agreement");

And whereas the collective agreement makes provision whereby employees to whom that agreement relates have a right to guaranteed remuneration;

And whereas all the parties to the collective agreement made application to the Secretary of State under section 18(1) of the Employment Protection (Consolidation) Act 1978(a) ("the Act");

And whereas the collective agreement complies with section 18(4) of the Act;

And whereas the Secretary of State, having regard to the provisions of the collective agreement (which so far as are material are set out in Schedule 2 to this Order), is satisfied that section 12 of the Act should not apply to those employees;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him as the appropriate Minister under section 18(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. 25) Order 1989 and shall come into force on 29th September 1989.

Exemption

2. Section 12 of the Act shall not apply to any employee to whom the collective agreement relates.

3. The Guarantee Payments (Exemption) (No. 20) Order 1980(b) is revoked.

Signed by order of the Secretary of State.

31st August 1989

Patrick Nicholls
Parliamentary Under Secretary of State,
Department of Employment

(a) 1978 c.44.
(b) S.I. 1980/1715.

SCHEDULE 1

PARTIES TO THE COLLECTIVE AGREEMENT

1. *Representing employers:*
The Federation of Master Builders.
 2. *Representing employees:*
The Transport and General Workers Union.
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SCHEDULE 2

MATERIAL PROVISIONS OF THE COLLECTIVE AGREEMENT

WORKING RULE 9—Guaranteed Week

Each operative shall be guaranteed 39 hours employment in each pay week paid at the appropriate standard rate of wages and calculated in the following way: 8 hours per day for four days from Monday to Thursday and 7 hours on Friday, provided always that he is available for work during the normal working hours for each day.

In any week in which a public holiday falls, the period of guarantee shall be reduced in proportion to the period of public holiday.

In the event of work being temporarily stopped due to inclement weather, shortage of work or any other cause, the guaranteed payment shall be made provided always that the operative maintains himself on site for working; that he is willing and able to perform satisfactorily such alternative work that he may be reasonably given and that he complies with the instruction of the employer as to when during normal working hours work is to be carried out, interrupted or resumed. (Where stoppage of work continues for one complete payweek see 'Temporary Lay Off Procedure below'.)

If an operative fails to keep himself available for work at any time during the normal working hours, unless otherwise instructed, he shall be deemed not to have kept himself available for any portion of the day.

An operative shall not be entitled to guaranteed payment for any time during a pay week in which his work is interrupted by virtue of a trade dispute involving himself or other operatives on his particular site, who are employees of the same employer or associated employer.

Should any dispute arise over the payment of the Guaranteed Week provisions which is not capable of solution through the Conciliation Procedure (outlined in Appendix A), the operative shall have the right to present his complaint to an industrial tribunal in accordance with S.18(4)(b) of the Employment Protection (Consolidation) Act 1978.

Temporary Lay Off Procedure

- (i) Where work is temporarily stopped so that the operative is unable to work for any part of the guaranteed pay week he shall be paid for that part of the pay week his guaranteed standard rate of wages as described above.
- (ii) Where work is temporarily stopped so that the operative is unable to work for a complete guaranteed pay week he shall receive for that week his guaranteed standard rate of wages as described above. Thereafter the employer may require the operative to register for unemployment benefit.
- (iii) After a period of three months has elapsed starting with the first day of a guaranteed pay week in respect of which the operative has received a payment in accordance with paragraph (ii) above and ending after a period of three months on the day of the month numerically corresponding to that day, less one, the provisions of paragraphs (i) and (ii) above shall again apply.
- (iv) The continuity of the operative's contract of employment shall be preserved and unaffected by the operation of the temporary lay off procedure under the provisions of this rule. While Working Rule 9 replaces Section 12 of the Employment Protection (Consolidation) Act 1978, its provisions are without prejudice to any other rights.

APPENDIX 'A'

CONCILIATION PROCEDURE

Parties to this Agreement have agreed that BATJIC should provide a means of conciliation in any industrial relations problem that arises between an affiliated employer and the trade union. Conciliation procedures under this Agreement shall not come into effect until the internal company procedure has been exhausted. It is the intention of the parties that the Regional Joint Councils should have the responsibility of providing conciliation in their areas and matters should only be referred to the National Council for conciliation where the regions have been unable to reach a mutual finding. It is emphasised that whilst the procedures are in operation there should be no strike, lock-out or other coercive action by either of the parties to the dispute.

The following are rules by which a Conciliation Panel hearing shall be conducted, either at Regional or National level:

- (a) When the internal procedure of the company is exhausted it shall be open to either party to make application for a Regional Conciliation Panel hearing by applying to the appropriate joint secretary. In certain circumstances it may be appropriate for a joint reference.
 - (b) Meetings of the Conciliation Panel should be convened at a time, date and place agreed by the joint secretaries and the Terms of Reference notified to the members of the Panel.
 - (c) The Conciliation Panel should consist of not less than three members from each side, including the joint secretaries and the Chairman, who shall have an independent vote.
 - (d) Written evidence should be submitted which may then be supplemented verbally at the hearing. The complainant party shall give evidence first, following which there may be questions from the respondent party.
 - (e) The respondent party shall then submit evidence after which the complainant may ask questions.
 - (f) The Conciliation Panel members will then have the right to question both parties on the evidence given in order to make their decision but there shall be no right of the parties to rechallenge the evidence of the other party.
 - (g) When all the evidence has been obtained, the parties shall withdraw from the hearing and the Conciliation Panel will determine its findings; each side voting independently to achieve an agreed finding.
 - (h) The decision will be forwarded to the parties to the hearing in writing.
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 29th September 1989, excludes from the operation of section 12 of the Employment Protection (Consolidation) Act 1978 employees to whom the Working Rule Agreement of the Building and Allied Trades Joint Industrial Council made between the parties described in Schedule 1 to this Order on 14th December 1988 relates. It supersedes the Guarantee Payments (Exemption) (No. 20) Order 1980 which is revoked by this Order. The present Order has been made to take account of the revised Working Rule Agreement, the material provisions of which are set out in Schedule 2 to this Order. These differ from the provisions in Schedule 2 to the previous Order in that the guaranteed week is reduced from 40 hours to 39 hours and the provisions relating to the temporary lay off procedure have been redrafted.

Copies of the Agreement are available for inspection between 10 am and noon and between 2 pm and 5 pm on any weekday (except Saturdays) at the offices of the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.