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STATUTORY INSTRUMENTS

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**1994 No. 1409**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Guarantee Payments (Exemption) (No. 29) Order 1994**

*Made* - - - - *23rd May 1994*

*Coming into force* - - *1st July 1994*

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 collective agreement relates have a right to guaranteed remuneration;

And whereas the parties to the collective agreement (whose descriptions are set out in Schedule 1 to this Order) all made application to the Secretary of State under section 18(1) of the Employment Protection (Consolidation) Act 1978(1) (“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) and 18(5) 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. 29) Order 1994 and shall come into force on 1st July 1994.

**Exemption**

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

**Revocation**

3. The Guarantee Payments (Exemption) (No. 3) Order 1977(2) is revoked.

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Signed by order of the Secretary of State.

Department of Employment  
23rd May 1994

*Michael Forsyth*  
Minister of State,

## SCHEDULE 1

### PARTIES TO THE COLLECTIVE AGREEMENT

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

## SCHEDULE 2

### MATERIAL PROVISIONS OF THE COLLECTIVE AGREEMENT

#### **NATIONAL WORKING RULE—1 Guaranteed Minimum Weekly Earnings**

##### **Guarantee**

**1.1** A building trade operative shall be guaranteed his guaranteed minimum weekly earnings comprising the current basic rate for the normal working hours prescribed in NWR 6.1 of each pay week as defined in NWR 5.2 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.

The guarantee is subject to the following conditions.

(1.1.1) that throughout normal working hours the operative is available for work within the meaning of NWR 1.2

(1.1.2) the guarantee does not apply to weeks of annual holiday under NWR 10

(1.1.3) the guarantee is reduced proportionately for any payweek in which:

- (a) the operative is engaged after the commencement of the payweek;
- (b) the operative's employment terminates before the end of the payweek;
- (c) the operative is absent for part of normal working hours due to certified sickness or injury;  
or
- (d) the operative is absent for one or more days of winter, Easter, summer or recognised public holiday.

(1.1.4) 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.

##### **Availability for Work**

**1.2** "Available for work" means that:

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(1.2.1) 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.

(1.2.2) 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.

(1.2.3) 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.

### **Loss of Guarantee**

1.3 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 NWR 1.1 for half the number of any normal working 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.

### **Temporary Lay-Off**

1.4 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 NWR 1.1. 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 NWR 13.3.4 relating to continuity of employment during temporary stoppage of work shall apply to him.

### **Short-Time Working in Woodworking and Factory Process Establishments**

1.5 As an alternative to the lay-off provisions contained in NWR 1.4, Operatives at woodworking and factory process establishments may be placed on short-time working by mutual agreement through application of the Factory Joint Committee procedures. During short-time working the employee will be entitled to receive not less than three days work per week. (A Joint Secretaries guidance note is to be issued.)

### **Continuity of Employment-Temporary Stoppage of Work**

1.6 Where an operative has been temporarily laid-off or in short-time working under NWR 1.4 or NWR 1.5 respectively, and is re-started by the employer, the employment for the purposes of NWR 13.1 is deemed to have been continuous.

### **Productivity-Incentive Scheme and/or Productivity Agreement**

1.7 It shall be open to employers and operatives, on any job, to agree an Incentive Scheme and/or Productivity Agreement for any operation or operations on that job, payment for which shall be payable in addition to the basic rate.

*Objects*

(1.7.1) The objects of Incentive Schemes and/or Productivity Agreements are:—

- (a) to increase productivity and reduce costs thereby keeping the cost of building at an economical level; and
- (b) to enable operatives to increase their earnings by increased effort while maintaining a high standard of workmanship and avoiding a waste of labour and materials.

It follows that such agreements must be strictly related to productivity.

#### *Disputes*

(1.7.2) In the event of a dispute or differences arising over an incentive scheme or productivity agreement there shall be no restriction of work or withdrawal from operation of the scheme whilst the procedure outlined herein is being followed. Any settlement of such a dispute or difference shall apply with retrospective effect from the date upon which the dispute or difference was raised officially by the accredited site representative/s of the operatives. The dispute shall be discussed in the first place between management and site representatives of the operative concerned. If these discussions are not successful then the provisions of NWR 27 will apply.

### **NATIONAL WORKING RULE—8 Shift Work**

**8.6** 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 basic 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) fall short of the normal working hours for that week.

### **NATIONAL WORKING RULE—9 Night Work (Other than under consecutive shift working)**

**9.3** 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 basic 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.

**9.5** Subject always to the general overriding principles and provisions of NWR1 where on the night immediately prior to, or immediately following, a public, winter, Easter 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 basic rate.

### **NATIONAL WORKING RULE—27 Grievances, Disputes and Differences**

**27.4** A dispute arising over the application of the terms on which payments are guaranteed under NWR 1.1 to 1.4 or NWRs 8.6, 9.3 or 9.5 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.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which comes into force on 1st July 1994, excludes from the operation of section 12 of the Employment Protection (Consolidation) Act 1978 employees to whom the collective agreement made between the parties described in Schedule 1 to the Order relates. The Order supersedes the Guarantee Payments (Exemption) (No. 3) Order 1977 which is revoked by this Order. The Order is necessary because two of the parties named in Schedule 1 to the 1977 Order, namely the National Federation of Building Trades Employers and the General and Municipal Workers Union have changed their names. With effect from 1st March 1984 the National Federation of Building Trades Employers changed its name to the Building Employers Confederation, and following a merger, the General and Municipal Workers Union became the General Municipal Boilermakers and Allied Trades Union with effect from 1st March 1983 and following a further merger the General Municipal Boilermakers and Allied Trades Union became GMB with effect from 1st March 1989.

Schedule 2 to the Order sets out the material provisions of the 1992 edition of the collective agreement, whereas Schedule 2 to the 1977 Order set out the material provisions of the 1976 edition of the collective agreement. Although there are minor and drafting differences between the two editions of the collective agreement, there have been no changes of substance since the 1977 Order came into force.

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