STATUTORY INSTRUMENTS

1977 No. 156

TERMS AND CONDITIONS OF EMPLOYMENT

The Guarantee Payments (Exemption) (No. 1) Order 1977

Made - - -	*2nd February* 1977
Coming into Operation	*2nd February* 1977

Whereas the Working Rule Agreement of the Civil Engineering Construction Conciliation Board for Great Britain is 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. 1) 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 Working Rule Agreement of the Civil Engineering Construction Conciliation Board for Great Britain.

Exemption

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

Signed by order of the Secretary of State.
2nd February 1977.

Harold Walker,
Minister of State,
Department of Employment.

(a) 1975 c. 71.

(b) 1889 c. 63.

SCHEDULE 1

PARTIES TO THE COLLECTIVE AGREEMENT

1. *Representing employers:* the Federation of Civil Engineering Contractors.

2. *Representing employees:—*
   1. the Transport and General Workers' Union;
   2. the General and Municipal Workers', Union;
   3. the Union of Construction, Allied Trades and Technicians.

SCHEDULE 2

MATERIAL PROVISIONS OF THE EXEMPTED AGREEMENT

IXA. SHIFT WORK

(1) "*Shift Men*"

Men whose normal duties are such as to require them to hold themselves available for work during mealtimes and in consequence have no regular mealtime, shall be deemed "shift men" and shall be responsible for taking over from and handing over to their counterpart at commencement and completion of duty. They shall be paid the number of hours they are on duty on the job at ordinary rate plus 13p per hour shift differential. If in the normal cycle of operations for the particular job they are required to be on duty between 10 p.m. Saturday and 10 p.m. Sunday, they shall during these hours be paid at the rate of time and a half plus 13p per hour shift differential, provided that the shift differential of 13p per hour shall be deemed to be a conditions payment and shall not be enhanced when calculating overtime payments. If work in such hours is not within the normal cycle of operations for the particular job, no shift differential shall be paid, but the rate of payment shall be double the ordinary rate.

This sub-clause does not apply to men working under Rules VD, VIII, IX or IXA(2).

(2) *Eight-hour Rotary Shifts*

On all work which is being carried out by three eight-hour shifts in the 24 hours, men shall meet and be paid for eight hours per shift at ordinary rates plus in the case of men completing the shift, a shift differential of 8p per hour. The normal aggregate number of shifts in the week shall be 15, which shall generally be worked between 10 p.m. on Sunday and 2 p.m. on the following Saturday. Provided that, if the shift commencing on Sunday night is worked, it shall be the first shift in the week. Provided further that, if the aggregate number of shifts in the weeks exceeds 15:

(*a*) the 16th and 17th shifts shall be paid at the rate of time and a half plus the shift differential of 8p per hour provided that the shift differential of 8p per hour shall be deemed to be a conditions payment and shall not be enhanced when calculating overtime payments, and

(*b*) the 18th and subsequent shifts in the week shall be paid at double the ordinary rate but no shift differential shall be paid.

(3) Sub-clause (2) will also apply in cases where two eight-hour shifts are worked in the 24 hours except that the normal aggregate number of shifts in the week shall be 10. Provided that, if the aggregate number of shifts in the week exceeds 10:

(*a*) the 11th and 12th shifts shall be paid at the rate of time and a half plus the shift differential of 8p per hour, provided that the shift differential of 8p per hour shall be deemed to be a conditions payment and shall not be enhanced when calculating overtime payments, and

(*b*) the 13th and subsequent shifts in the week shall be paid at double the ordinary rate but no shift differential shall be paid.

This sub-clause does not apply to men working under Rules VD, VIII, IX or IXA(1).

(4) For the purpose of Rule IA—Joint Board Supplement and Rule IVA—Guaranteed Bonus, the first eight working hours of each of the first five normal day shifts, or the first five normal night shifts, as appropriate, in any payweek shall constitute normal working hours.

XA. GUARANTEED MINIMUM

(1) *Availability*

An operative in the employment of an employer shall be deemed to have kept himself available for work during the whole of the normal working hours of any day if he complies with the following conditions:

(*a*) that, unless otherwise instructed by the employer, he has presented himself for work on the site at the starting time prescribed by the employer and complies with the employer's instructions in regard to the period (during normal working hours) for which he shall remain on the site;

(*b*) that he is willing and able to perform satisfactorily on the site or elsewhere the work for which he was engaged or suitable alternative work; and

(*c*) that, in all circumstances, particularly weather conditions, he complies satisfactorily with the instructions of the employer as to when, during normal working hours, work is to be carried out, interrupted, or resumed.

If a man, during the normal working hours of any day, fails to keep himself available for work as aforesaid, he shall be deemed not to have kept himself available for any portion of such day except such hours as he has actually worked.

(2) *Guaranteed Minimum*

(*a*) In respect of any pay week during any part of which a man has performed actual work on the job and, being in the employer's employment, has kept himself available for work (as aforesaid), the man shall be entitled to receive payment of not less than the equivalent of 40 hours at ordinary rates (hereinafter referred to as the "guaranteed minimum"). Provided always that should a man not be available for work (as aforesaid) during the normal working hours of any day in such pay-week, or should his employment be terminated during such pay-week, he shall be entitled only to such proportion of the guaranteed minimum as the time he was available for work (as aforesaid) and in the employer's employment bears to 40 hours.

(*b*) If, following immediately upon a pay-week in which the man has performed actual work on the job, there occurs a pay-week in which the man being in the employer's employment keeps himself available for work (as aforesaid) but does not perform actual work on the job, the man shall be entitled in respect of that week to payment of the guaranteed minimum. Provided always that should a man not be available for work (as aforesaid) during the normal working hours of any day of such last-named pay-week or should his employment be terminated during such pay-week, he shall be entitled only to such proportion of the guaranteed minimum as the time he was available for work (as aforesaid) and in the employer's employment bears to 40 hours.

(*c*) If, during the next succeeding pay-week or weeks, the man does not work on the job, he shall not be entitled to any payment whether he keeps himself available for work or not, it being his duty to register for unemployment benefit.

(*d*) If, in any pay-week collective industrial action of any kind, in contravention of the Constitution of the Board or this Agreement, is taken by operatives employed on the site 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 such action and who remain available for work. In the event that, by reason of such action, the employer cannot provide such continuity of work, the guaranteed minimum shall be deemed to be suspended until such time as normal working is restored.

(*e*) If, in any pay-week a site shall be closed for any day or days pursuant to Rules VIB, VII(*b*), or the Holidays-with-Pay-Agreement, or for any day or days of holiday pursuant to any general or local custom or to any custom in the

employer's business, then as regards any man not required to work on such day or days, he shall be entitled in respect of that pay-week only to such proportion of the guaranteed minimum as the time he was available for work (as aforesaid) on the remaining days of such pay-week and in the employer's employment bears to 40 hours. Provided that the employer shall be entitled to substitute any day (whether in the said week or the week immediately preceding or following) for any other day (save a Bank or other Public Holiday) hitherto observed as a holiday pursuant to such last mentioned custom.

(*f*) For the purpose of calculating the guaranteed minimum—

(1) Any increases or decreases of pay or plus rates or any new plus rates shall if they come into operation on any day other than the first day of a pay-week be deemed to come into operation only on the first day of the pay-week immediately following.

(2) No part of the following earnings shall be taken into account:
(i) Sunday earnings.
(ii) Earnings in respect of work done outside the normal working hours.
(iii) Bonus earnings.
(iv) Plus rates payable in respect of conditions under which work is done.
(v) The total amount of any increases or decreases of pay or plus rates or any new plus rates which come into operation on any day other than the first day of a pay-week.

(*g*) No payment of guaranteed minimum in respect of time not worked shall be made under this rule in the following cases:—
(i) Tidework.
(ii) Work paid by the shift.
(iii) Sunday work.
(iv) Time outside the normal working hours.

(3) *Joint Board Supplement and Guaranteed Bonus*

Payment of joint board supplement and guaranteed bonus, in addition to the appropriate guaranteed minimum, is in accordance with Rule IA and IVA respectively.

(4) A dispute arising under this rule or concerning minimum payment due under Rule IXA—Shift Work, or Rule XI—Tide Work may, at the option of the claimant, be referred to A.C.A.S. and/or an industrial tribunal in the event of no decision by the Board.

XI. Tide Work

(*a*) Where work under tidal conditions is carried out during part only of the normal working hours, and men are employed on other work for the remainder of the normal working hours, ordinary rates, joint board supplement in accordance with the provisions of Rule IA, and guaranteed bonus in accordance with the provisions of Rule IVA (with the addition of any plus rate payable in respect of the conditions under which work is done, e.g. boot money) shall be paid during the normal working hours and thereafter payment shall be in accordance with Rule VII.

(*b*) Where work under tidal conditions necessitates the men turning out for each tide and they are not employed on other work they shall be paid a minimum for each tide of 6 hours' pay at ordinary rates, provided they do not work more than eight hours in the two tides. Work over 8 hours shall be paid for proportionately. Work done on Saturday after 4 p.m. and all Sunday shall be paid at the rate of double time. Men shall be guaranteed 8 hours at ordinary rates for time worked between 4 p.m. and midnight on Saturday and 16 hours at ordinary rates for two tides worked on Sunday.

For the purpose of Rule IA—Joint Board Supplement and Rule IVA—Guaranteed Bonus, the first eight working hours of each of the first five days worked in the normal cycle of operations in a pay-week shall constitute normal working hours.

XIX. STATEMENT OF PARTICULARS UNDER CONTRACTS OF EMPLOYMENT ACT

The Working Rule Agreement, including Rule XVIII, shall be incorporated into the operative's Contract of Employment by reference in the Statement of Particulars under the Contracts of Employment Act 1972.

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 Working Rule Agreement of the Civil Engineering Construction Conciliation Board for Great Britain relates.

Copies of the Agreement 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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