Construction Industry Joint Council

Employers Guide to the Construction Industry Joint Council Working Rule Agreement 2018

Construction Industry Joint Council

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Introduction

This booklet has been prepared for the guidance of employers who chose to incorporate the provisions of the CIJC Working Rule Agreement into the contracts of employment of their operatives. It is intended to help answer many of the questions frequently asked by employers about the interpretation of the various clauses and best practice. This booklet does not form part of the agreement itself and although there should not be any conflict between advice in this booklet and the agreement it is the provisions of the Collective Agreement itself that must take precedence.

What is a Collective Agreement?

A collective agreement is simply a set of terms of employment negotiated between employer representatives and trade unions. There are a large number of collective agreements operated throughout the UK and Europe and the CIJC agreement is considered to be the premier agreement for the UK construction industry.

The parties to the agreement for the employers are:

Civil Engineering Contractors Association (CECA)
Home Builders Federation (HBF)
National Access & Scaffolding Confederation (NASC)
National Association of Shop fitters (NAS)
National Federation of Builders (NFB)
National Federation of Roofing Contractors (NFRC)
Painting & Decorating Association (PDA)
Scottish Building Federation (SBF)
Build UK

For the operatives the trade unions involved are:

Unite
GMB

Where, as with the CIJC, a collective agreement is formed it is up to individual employer's to decide whether or not they wish to incorporate the agreement into the terms and conditions of employment of their workforce. It is estimated that somewhere between 250,000 and 500,000 operatives in the UK have the terms of the CIJC agreement incorporated directly into their contracts of employment or, at least, their contracts of employment are based on the CIJC terms.

There is no legal requirement for an employer in the UK to incorporate the terms of a collective agreement into the contracts of employment of its workforce however, if an employer chooses to do so then the terms themselves and any subsequent amendments do become legally enforceable.

Why do employers choose to use a Collective Agreement?

As far as the CIJC agreement is concerned this is the most widely used agreement within the construction industry in the UK and therefore its terms and conditions have become regarded as "the norm". The parties to the agreement keep the terms and conditions under constant review to ensure that it remains fully compliant with ever changing employment legislation. In this respect employers who chose to use it will know that the contracts of employment for their workforce are always up-to-date. Further, because the agreement is negotiated with the construction industry trades unions those employers who chose to use it generally enjoy more harmonious industrial relations with their workforce.

Recent background

Up until the late 1990s the UK construction industry tended to rely on two separate but similar agreements. For the building sector there was the National Joint Council for the Building Industry (NJCBI) agreement and for the Civil Engineering sector there was the Civil Engineering Construction Conciliation Board for Great Britain (CECCB). The new “pink book” Construction Industry Joint Council (CIJC) agreement was formed on the 1st January 1998 and provided the industry with an up-to-date and streamlined agreement, which effectively replaced the two out-of-date agreements. It should be noted that the CIJC agreement was not an automatic replacement for either of the two old agreements and employers wishing to utilise the new agreement must issue their workforce with new “statements of main terms of employment” these statement effectively form the contact of employment and are available in pad form from Construction Industry Publications (CIP) 0870 074 4400.

It is not necessary for an employer to be a member of a Trade Association to utilise the CIJC agreement. It is open for all employers in the construction industry to utilise. However, some employers chose to utilise only elements of the agreement and this is known as “cherry picking”. Often such employers do not issue their workforce with written statements of main terms of employment – which is a legal requirement. The danger here is that the employer will unwittingly find that the whole of the agreement has become “implied” into the contracts of employment of his workforce and the employer is therefore bound by all of the provisions of the agreement. It is therefore vitally important that all employers ensure that they have issued their workforce with up-to-date written statements of main terms of employment.

The Agreement Itself

From its inception the parties to the agreement have adopted a practice of negotiating multi-year pay settlements. This involved a series of three year settlements from:

1997 to 2000

2000 to 2003

2003 to 2006 and

2006 to 2009

However, in recent year because of recession and a general down turn in the economy we have seen pay freezes and short term settlements. This year a two year pay and conditions settlement was agreed details of which are contained in Appendix 4.

This means that the next round of negotiations is due to take place in the spring of 2020 giving employer's certainty for the next two years.

WR1 Entitlement to Basic and Additional Rates of Pay

This is the "engine room" of the agreement which has established 6 grades from craft at the top to general operative at bottom with 4 intermediate grades called skill rates. These could perhaps be better described as semi-skilled rates.

It must be emphasised that pay rates promulgated are minimum rates only. That is, an employer is entirely free to pay above such rates but would be in breach of the agreement if basic pay were below the promulgated level. As pay rates are promulgated on a national level it is only to be expected that actual rates paid throughout the UK will vary according to location and market forces.

The parties to the agreement negotiate minimum rates of pay and not across the board percentage increases. Inevitably when a pay rate is increased a percentage will be calculated. This can give rise to an expectation by someone earning above the promulgated minimum rate that they will have their pay increase by the agreed percentage. This is not the case and as explained above the entitlement is not to be paid less than the promulgated minimum rate.

Where an employer pays in excess of the minimum rate promulgated then it is open to the employer to decide by how much they increase rates actually paid to their operatives. Some employers have adopted a practice of increasing their pay rates by the same cash amount promulgated under the agreement each year. Other employers have calculated how much the CIJC rates have increased in percentage terms and used this same percentage to increase their own rates. Where employers adopt one of these practices over a number of years they will almost certainly find they have created an "implied" continuing entitlement by virtue of custom and practice. In such a situation they could find it difficult to break the tradition if they wished to do so. Where employers pay in excess of the minimum promulgated they are advised to think carefully about the pay rises they award to their operatives employed under the agreement.

What Jobs are covered by the "craft rate"

The craft rate applies to all those occupations that would normally require an operative to have served a recognised apprenticeship. Typically these would include bricklayers, carpenters, plasterers, painters etc. Some employers use the CIJC agreement for electricians and plumbers. Whereas these trades are more normally employed under JIB terms it is perfectly lawful to employ such tradesman under CIJC where the employer chooses to do so.

What Jobs come under the four "skill rates"

All the main occupations covered by skill rates are detailed in schedule 1 of the agreement (pages 37 to 44). In 2013 a new section WR.13 dealing with Highways Maintenance was added to the agreement and appropriate occupations incorporated within schedule 1.

What Occupations come under "general operative"

The general operative rate is available for someone undertaking entirely unskilled work for which a minimum of training is necessary. Most typically general labourer.

WR1.5 Apprentices

Apprentices employed under the agreement are normally employed for a fixed period of training and there is a separate written statement of main terms of employment available from CIP (0870 078 4400) specifically for apprentices. Pay rates for apprentices have been established based on the stage of training and not age. The rates are designed to encourage apprentices to progress with their college studies and a significant pay increase occurs when the apprentice achieves NVQ 2. Further it is possible for the apprenticeship to be completed early where the apprentice achieves NVQ 3.

In most respects other terms and condition for apprentices are the same as for other operatives employed under the agreement. There are restrictions on working hours for those under 18 (both apprentices and general operatives). Apprentices are required to follow a course of further education at College and are paid for attendance. The parties to the agreement recognise that apprentices represent a significant investment for employers and a joint secretary's note is to be found on page 50 of the main agreement setting out guidance for employers when dealing with such matters as discipline in respect of apprentices.

Young Workers (16 and 17 year olds)

Nowadays relatively few 16 and 17 year olds are employed within the construction industry. Where an employer engages a 16 or 17 year old there are more onerous requirements with regard to health and safety, risk assessment and supervision and employers must ensure these matters are fully complied with. The pay rate for a 16 and 17 year old is set at 70% of the adult rate. Operatives, 18 and above are entitled to the full general operative rate.

WR2 Bonus

The agreement leaves bonus as a matter between employer and operative.

Some employers chose to pay a flat hourly rate only. Others chose to pay a flat rate plus lump sum or hourly supplement as a bonus while others choose to pay a flat rate plus a bonus based on productivity or measure.

What suits one employer may not suit another. Where an employer pays a flat rate bonus or an additional element to the hourly rate as bonus, it is likely that this will be regarded as a contractual entitlement unless it is clearly specified in writing that the employer reserves the right to vary such bonus arrangements and that the employer does vary the arrangements from time to time. Where a contractual bonus entitlement has been established then it is a condition under the agreement that increases in basic pay rates are not off-set by a reduction in the contractual bonus entitlement. This practice has become known as “claw back” and would be in breach of the provisions of the CIJC agreement.

Where an employer operates a bonus structure based on productivity then it is normal for such bonus arrangements to be re-negotiated from time to time and usually when the operatives moves from one job or operation to another.

WR3 Working Hours

Under the agreement the basic working week is 39 hours or 40 for night work. The agreement envisages the normal working week to be Monday to Thursday 8 hours a day and 7 on Fridays. It is open to the employer to decide what the actual hours worked are and these typically vary between starting at 7.00am to 8.00am with a half hour unpaid lunch break and therefore finishing between 3.30pm and 4.30pm Monday to Thursday and 1 hour earlier on Fridays. Where an employer finds it necessary to vary the normal starting and finishing times the operatives should be given as much notice as possible and if the variation creates a problems for the operative the employer should consult with the operative to see how such problems may be overcome. Ultimately the employer has flexibility to vary starts and finishing times within reason.

Rest/Meal Breaks

Under the provisions of the Working Time Regulations adult operatives are entitled to a minimum rest break of 20 minutes in 6 hours but young workers (16 and 17 year olds) are entitled to a break of 30 minutes where the working period exceeds 4½ hours. The CIJC agreement provides a 30 minutes lunch break, which is normally taken after the first 4 hours of the working day. This therefore complies with the provisions of the Working Time Regulations 1998 for both young and adult workers. It is however, customary to have another short, paid, morning break. It is up to the employer to determine if and when such break or breaks are taken and for management to control such breaks.

WR.3.1.1 states *"The breaks shall aggregate one hour per day and shall include a lunch break of not less than half an hour."*

WR.3 states *"The expression normal working hours means the number of hours prescribed above when work is actually undertaken reckoned from the starting time fixed by the employer".*

It can therefore be concluded that any breaks agreed up to one hour are both unpaid and have the effect of extending the working day.

Long Hours Working

The construction industry is noted for working long hours and often significantly in excess of the average 48 as laid down by the Working Time Regulations 1998. Where operatives work, on average, more than 48 hours a week over a reference period of 17 weeks then the employer should ensure that the operative has signed an “opt-out” and an example is contained in Appendix 1 of this booklet. It should be emphasised that no operative can be forced to either sign the opt-out or work, on average, more than 48 hours each week although in practice many operatives want to work additional hours for additional payment.

WR4 Overtime Rates

The first 4 hours of overtime worked during the week (Monday to Friday) or Saturday are paid at time and a half. Thereafter all hours worked are paid at double time. All hours worked on Sunday or a public or bank holiday are paid at double time.

Overtime is calculated on a daily basis but overtime premium rates are not payable until the normal hours of 39 (or 40 for night work) have been worked. By way of example if an operative had worked overtime during the week Monday to Thursday but failed to return from lunch on Friday then an appropriate number of hours of overtime previously worked would be used to off-set the shortfall of hours on the Friday. Where an operative is absent due to genuine sickness, holiday or other approved reason then such absence should not be taken into account when calculating hours worked at overtime premium rate.

By way of example if an operative worked overtime in the period Monday to Thursday but was either genuinely unwell, on holiday or absent for an approved reason on Friday the 7 hours that would normally be worked on a Friday would not be used to off-set hours worked at overtime premium rate.

WR5 Daily Fare and Travel Allowances

The nature of the construction industry requires that operatives move from site location to location as jobs start and finish and to this end a "flexibility clause" is incorporated into the contract of employment under the CIJC agreement. This provides the employer with the flexibility to transfer the operative from one site to another entirely at the employer's discretion but within certain limitations. This is dealt with under WR14 transfer arrangements.

Many employers provide transport for their operatives in which case the only inconvenience for the operative is the actual time spent travelling. However, the employer can require the operative to make his or her own travel arrangements in which case transferring to a distant site will involve the operative in additional transport costs. The agreement provides compensation both for additional time spent travelling and additional transport costs where the operative is required to travel a distance more than 9 miles from home and a scale from 9 miles to 50 miles has been established in respect of both travelling time and fare allowances. Where an employer utilises this element of the agreement it is important that distances are measured accurately from home to site measured by either RAC Route Planner or similar on the most direct route.

Tax and National Insurance Treatment of Travel and Fare Allowances

Travel and fare allowances are treated differently for tax and national insurance. Employers must therefore take great care when making any payments without the deduction of tax and/or national insurance.

The CIJC has obtained a concession from Her Majesties Revenue and Customs (HMRC) such that fare allowances, paid strictly in accordance with the WRA, can be paid without the deduction of tax or national insurance. The fare allowance is designed to reimburse the operative for the additional cost of physically travelling a greater distant to site (that is beyond 9 miles). Providing the operative does not travel in the employer's transport it does not matter how he or she actually travels. It could be by bus, train, car, motorcycle, pedal cycle or car share! The important thing is that the employer keeps accurate records of where the operative lives, works and the distance between the two locations.

Where the journey involves a toll charge or ferry charge then the full cost should be reimbursed to the operative. Ideally the operative should produce a receipt or voucher. However, where this is not practicable, the employer should retain evidence of the actual cost involved and be satisfied that the operative had incurred the cost. By way of example if two or more operatives may choose to share a lift in a single private vehicle all operatives would be equally entitled to receive a fare allowance but only the operative who actually paid the toll, ferry crossing fare etc would be entitled to reimbursement.

Having due regard for health and safety an operative may be required to travel distances beyond the published scale of 50 miles. In this case payment for each additional mile travelled beyond 50 should be paid based on the difference between the rate for the 49 and 50 miles on the scale.

Travelling and fare allowances are increased each year at the same time that pay rates are increased. Travelling allowances are increased by the same percentage that basic rates increase by. Fare allowances are increased in line with the increase in Consumer Price Index (CPI) for the previous March but are subject to HMRC approval.

WR6 Shift Working

Shifting working is a situation where a minimum of 16 hours work is carried on a job in each 24-hour period on a regular basis.

This situation often arises on road or highway maintenance contracts where continuous working or continuous cover is required. A typical situation could be that a gang of operative's work from 6.00am to 2.00pm and another gang works from 2.00pm to 10.00pm.

The arrangement covered by WR6 is sometimes referred to as "double day shift" and sometimes "rotary shift working".

Double day shift infers two gangs working two separate shifts on a regular basis. The term "rotary" infers that there is some rotation between early shifts and late shifts. The premium payments applicable under WR6 are the same for both arrangements. That is basic rate plus a shift allowance of 14% for normal hours worked.

When overtime is worked the operative receives basic rate at time and a half plus 14% of basic rate for the first 4 hours. By way of example an operative on a basic rate of £10.00 per hour would receive a shift allowance of £1.40 per hour for normal hours worked making a total of £11.40 per hour. The first 4 hours of overtime would be paid at time and a half viz. £15.00 plus 14% of basic rate viz. £1.40 per hour making a total hourly payment of £16.40 per hour. Beyond 4 hours of overtime the operative receives a maximum of double time viz. £20.00 per hour.

If in any week an operative has worked 5 complete scheduled shifts and is required to work an additional shift then the first 8 hours should be paid at time and a half plus 12½% shift allowance for the first 8 hours of the shift. By way of example an operative working a 6 day in any week and on a basic rate of £10.00 per hour should be paid £15.00 per hour plus £1.25 per hour for the first 8 hours, viz. £16.25 per hour. If the operative is required to work an additional shift (a seventh day in any week) then payment should be double time viz. £20.00 per hour but with no shift allowance.

In reality WR6 is one of the least used rules within the CIJC agreement but one of the most complex. The rule states that *"employers and operatives may agree alternative shift working arrangements and rates of pay where, at any job or site, flexibility is essential to effect completion of the work."* Employers utilising this rule may wish to consult with the employer's secretary regarding the flexibility available.

WR7 Night Work

A night worker is defined as a worker who works at least 3 hours of his or her daily working time between the hours of 11.00pm and 6.00am on the majority of days worked. Therefore someone who occasionally works nights would not be considered a night worker for either the purposes of the CIJC Working Rule Agreement or the Working Time Regulations 1998. A night worker is someone who spends at least 50% of their working time working nights. The night worker is entitled to a 25% up-lift on the basic rate of pay. If the night worker works overtime then the first 4 hours of overtime are paid at time and a half of basic rate plus the 25% up-lift. By way of example a night worker on a basic hourly rate of £10.00 should be paid £10.00 plus £2.50 which equals £12.50 for the first 8 hours worked. For the first 4 hours of overtime the night worker should be paid at time and a half of basic rate, which equals £15.00 plus 25% of basic which equals £2.50, total equals £17.50. Thereafter double time is payable. Operatives undertaking night at weekends (Saturday and Sunday nights) should be paid double time for all hours worked.

Employers should note that the Working Time Regulations 1998 imposed strict limitations on the hours a night worker can actually work. By way of guidance the maximum number or hours in any one week must not exceed 48. If the work involves special hazards or heavy physical or mental strain then the night worker must not work more than 8 hours in any 24-hour period during which the night worker performs night work.

Individuals cannot opt out of these restrictions but it is possible to opt-out through a collective agreement and in 2013 employers negotiated such an opt out which is contained within a new WR.29 page 36.

Under the Working Time Regulations 1998 night workers are entitled to a free health assessment to ensure that night work is not detrimental to their health.

It should also be noted that night workers are entitled, on request, to a written risk assessment identifying any special hazards or heavy physical or mental strain and the control measures, which apply to eliminate or adequately to reduce such risks.

WR12 Storage of Tools

Where practicable employers are expected to provide adequate lock-up facilities where an operative can leave tools safely when not at work. In the event that tools properly secured in an employer's lock-up are either stolen or destroyed by fire then the employer shall reimburse the operative up to a maximum figure for such loss. The maximum employer liability is £750.00. Such liability would not apply where, by way of example, an operative has left tools in an employer's vehicle overnight.

WR13 Highways Maintenance

This is a new rule introduced in May 2013. The working patterns of highways maintenance operatives vary significantly from those of the normal Monday to Friday operative and this new rule “sign posts” employers to consider relevant matters to be agreed.

By way of example an operative may work a 4 day shift of 12 hours each week (48 hours).

This means that annually the operative will work 208 (4 x 52) days compared to the Monday to Friday worker who works 260 days (5 x 52). The length of the working days are different, and consideration needs to be given to overtime and the number of annual holidays. The new section does not give answers but identifies elements to consider.

WR14 Transfer Arrangements

It is a feature of the construction industry that operatives move from site to site as work finishes and starts again elsewhere. For this reason the CIJC WRA contains a mobility clause allowing employers to require operatives to transfer from one job to another providing the job is within daily travelling distance of where the operative is living.

A site is considered to be within daily travelling distance if when transport is provided free by the employer the operative can normally get from where he or she is living to the pick-up point designated by employer within 1 hour, using public transport if necessary. Where the employer does not provide transport the operative must be able to get from where he or she is living using public transport and under normal conditions within 2 hours.

Where an employer is proposing to transfer an operative to site more than 50 miles from his or her home, consideration should be given to asking the operative to lodge away under the provisions of WR15. If, by mutual consent it is agreed that the operative would travel daily then both fare and travel allowance scales maybe extended by simply adding the increment from 49 to 50 miles to the miles travelled beyond 50.

WR15 Subsistence Allowances

Under the Working Rule Agreement an employer does not have an automatic right to require an operative to lodge away unless the operative has previously lodged away from his or her home within the preceding 12 months. To be entitled to subsistence allowance under this rule the operative must have been initially engaged at another site and transferred by the employer. An operative commencing employment with a new employer would not be entitled to an allowance under this rule at the site at which he or she originally starts working.

The CIJC has obtained a dispensation from Her Majesties Revenue and Customs (HMRC) to pay an allowance under this rule paid without deduction of tax or national insurance and without receipts or evidence of expenditure. If an employer is making payments under this rule then it is very important that certain criteria are complied with, otherwise the employer could be faced with heavy fines from HMRC.

Firstly, as mentioned above, the operative must have been transferred from one site to a distant site. Secondly the operative must be maintaining his or her home and genuinely lodging away. Employers are advised to obtain documentary evidence that the operative is maintaining a principal residence whilst lodging away and Appendix 3 of this booklet contains an example “application for subsistence/lodging allowance”.

WR16 Periodic Leave

An operative lodging away has an entitlement to return home periodically with the employer paying towards both the cost of travelling and time spent travelling.

The frequency of home visits depends on how far away the operative is lodging.

Based on shortest distances measured on the RAC route planner or similar of up to 80 miles the entitlement is every 4 weeks. Longer distances are by agreement between operative and employer with the assumption that the greater the distance the longer the time between home visits.

When going on periodic leave the operative has two entitlements:

1. Payment for the time spent travelling

Time spent travelling is not reckoned as part of the working week so in this context an operative could finish work at, say 3.30pm on a Friday and return to his or her home. The employer must pay up to eight hours per journey at basic rate. So if the journey is five hours the operative should be paid five hours (taxable) at basic rate. However, if the journey was ten hours then only eight hours would be payable. The same principle applies for the return journey.

This rule envisages that the operative travels outside of normal working hours.

In practice some employer's would, for example, allow the operative to leave site at 12.00 midday on the Friday in which case it would be appropriate to take into account the working hours missed when calculating the travel time payment.

By way of example from above and assuming the operative would have worked a further three hours in the Friday afternoon (12.30 to 15.30) then the operative with the five hour journey should be paid for the full day plus a further two hours at basic rate.

The operative with the ten hour journey should be paid for the full day plus a further five hours at basic rate.

The same principle should apply to return journeys. That is the rule assumes that the operative reports for work at the normal staring time on the return day but if a later start time is agreed then the working hours missed but paid for should be taken into account when calculating the eight hour entitlement.

2. Payment of Fares

WR16.2 says that *"where an employer does not exercise the option, to provide free transport, the obligation to pay fares may, at the employer's option be discharged by the provision of a free railway or bus ticket or travel voucher or the rail fare."*

This must be regarded as an area of the agreement in need of up-dating! Who provides a bus ticket? And the price of rail tickets vary significantly according to when they are booked etc.

In practice some employer's look up the price of a rail ticket (which are many and varied) and use that as the basis of payment. Others use the standard fare allowance scale and extrapolate for distance, on a one way basis.

WR17 Guaranteed Minimum Weekly Earnings

Providing the operative remains available for work the employer must make a minimum payment of basic hours at basic rate. This means that if the operative is available for work but the employer is unable to provide for any reason such as inclement weather, temporary shortage of material etc then the operative must be paid basic rate for basic hours. It is for the employer to decide if to release the operative or not. If the employer decides to release the operative for the remainder of the day then basic rate for basic hours remains an entitlement. If, on the other hand, the operative decides to leave site without permission then the operative would not be entitled to payment for unauthorised hours lost.

Where the specific work for which the operative has been engaged is temporarily not available the employer may require the operative to undertake suitable alternative work. If the alternative work were of a lower grade the operative would still remain entitled to his or her normal basic rate.

Where the unavailability of work is more substantial then, under the terms of the CIJC WRA the employer may temporarily lay-off the operative. Lay-off is only available if its provision is specifically contained within the contract of employment which is the case with the WRA page 14 WR.17.4 During the first 5 days of lay-off in any 13 week period the operative is entitled to payment at basic rate. If lay-off extends beyond 1 week, no further payment is due (until 13 weeks have elapsed) and the operative may sign on and receive job seekers allowance. During this period the contract of employment remains in place and the employer may call the operative back to work at any time. If lay-off extends beyond 4 continuous weeks or a total of 6 interrupted weeks in any 13 week period the operative can resign and claim a redundancy payment. Employers faced with this situation should seek specialist advice. An employer faced with such a claim has effectively two choices. See Appendix 4 & 4a.

Firstly to accept the application and make a redundancy payment. However, the employer may wish "counter" the claim and offer the operative the opportunity to return to work with a guarantee that there will be no further lay-off within the next 13 weeks. Appendix 4 provides further guidance on lay-off including a model letter the employer may choose to use if the situation arises.

WR18 Annual Holidays

The agreement provides a total of 30 days paid annual holidays inclusive of all public/bank holidays. For the purpose of calculating entitlement the holiday year runs from the 1 January and paid holiday entitlement accrues at the rate of 0.577 days per complete week of service.

Under the agreement there is a winter holiday break of 2 complete weeks Monday to Friday which means return to work is always after 1 January.

There is always an overlap between when the winter break ends and 1 January and those days of holiday between 1 January and return are normally taken from the previous year's entitlement so that on return the operative starts with a "clean sheet" with accrual of holidays starting from 1 January.

Following a recent EU ruling, payment for holiday pay is now calculated in two separate ways. Under the EU Working Time Directive annual entitlement is 20 days and payment must include average overtime. Averaged over a 12 week period.

However, to try and keep things simple under the CIJC Agreement the 22 days of annual holidays have been designated as "Euro days" and paid including average overtime. The 8 days of public/bank holidays are paid at normal pay rate.

The following dates have been established for winter breaks:

2018/19

The closedown will be from Saturday 22nd December to Sunday the 6th January 2019 inclusive.

2019/20

The closedown will be from Saturday 21st December to Sunday 5th January 2020 inclusive.

When calculating paid holiday entitlement for part years of service the employer should establish how many complete weeks the operative has worked (or will work) in the holiday year and multiply this by 0.577 to give the total (including Public and Bank) paid holiday entitlement.

If on leaving, the operative has been paid for more holidays than earned then an appropriate deduction should be made from the final payment.

Conversely if the operative has earned more paid holiday entitlement than actually taken then a payment in lieu should be made.

Working During a Closedown or Public/Bank Holiday

It is not unusual for operatives to be required to work during either a holiday closedown period or on a public or bank holiday. Work done during a normal holiday closedown period should be paid at the standard rate and the operative allowed to take alternative paid holidays. Work done on a Public or Bank holiday is paid at double time and the operative can either take a day off later (by agreement with the employer) or alternatively be paid for the public or bank holiday as well as the double time. Effectively this means the operative will receive triple time.

WR19 Public and Bank Holidays

The WRA recognises eight Public and Bank holidays in England, Wales and Scotland. The actual dates are promulgated in October/November of the preceding year and reflect local arrangements such as Trades days in different areas of Scotland.

WR20 Industry Sick Pay

Under the agreement operatives are entitled to a "top-up" on statutory sick pay (SSP) and this is known as industry sick pay (ISP).

The rules for ISP virtually mirror those for SSP except SSP is payable for a maximum of 28 weeks from day one of employment and industry sick pay is payable for a maximum of 13 weeks in any one year or single period of absence and after 6 months service. Operatives with less than 6 months service have a lesser entitlement on a scale that starts after 4 weeks of service.

The agreement has a limited number of exceptions where ISP is not payable and these include where absence arises due to *attempted suicide, self-inflicted injury, the operative's own misconduct, any gainful occupation outside working hours, participation as a professional in sports or games or insurrection or war.* – WR20.7*(e)*

WR21 Benefit Schemes

Operative are provided with benefits in accordance with arrangements established with the B&CE.

Life Cover

Life cover is provided from day one of employment through an insurance arrangement. Currently the cover is £32,500 which is doubled to £65,000 if death occurs either at work of travelling to or from work. From 1st January 2019 this will increase to £40,000 and £80,000 respectively.

Accident cover

Accident cover is also provided from day one of employment. This cover is provided strictly in relation to accidents that occur either at work of travelling to or from work.

Both Life & Accident insurance cover is provided through B&CE with a weekly premium paid by the employer of £1.39 per employee. This will increase to £1.49 per employee, per week in January 2019.

Pensions

CIJC has nominated the B&CE The People's Pension as the preferred pension provider for operatives employed under CIJC terms. An industry wide scheme is important because of the transient nature of employment and the aim to reduce the number of pension pots held by individuals. However, CIJC recognises that it is ultimately for the employer to decide on a pension provider and in the event that an employer utilises an alternative to B&CE the contribution levels and general arrangements in respect of pension provision shall be no less favorable than the following provisions:

(a) Operatives within the age range 22 up to state pension age to be auto-enrolled with those outside of this range being given the opportunity to enroll if they wish.

(b) The existing £5.00 per week minimum employer contribution to be maintained during Phase Two with employers making a higher level of contribution if required as a result of the operatives' level of earnings. Operatives to make a minimum £5.00 per week contribution during Phase Two and a higher level of contribution if required as a result of the operatives' level of earnings.

(c) Contribution to be based on banded earnings as determined by the pension's regulator.

(d) Operatives who currently receive a £5.00 per week employer contribution but make no personal contribution and decide to opt-out and therefore do not make a personal contribution of at least £5.00 per week shall continue to receive the existing £5.00 per week employer contribution.

(e) Operatives who currently neither receive an employer contribution nor make a personal contribution and decide to opt-out shall not be eligible to receive any employer contributions.

(f) Operatives who currently make a voluntary personal contribution of between £5.01 and £10.00 per week and while they continue to do so shall receive a matching employer contribution.

(g) An operative who has opted-out of the new pension arrangements may, at any time decide to enroll and providing such operative makes a minimum £5.00 per week personal contribution will receive a matched contribution from the employer up to a maximum of £10 per week.

(h) An operative may, at any time, decide to increase their personal weekly contribution from £5.00 up to £10.00 per week in which event such operative will receive a matching contribution from the employer.

(i) An operative may choose to make a personal contribution of any amount above £10.00 per week however, in such circumstances the employer's contribution will be limited to £10.00 per week or that required as a result of the operatives level of earnings.

(j) As an objective newly employed eligible operatives should be auto-enrolled within 6 weeks of commencing employment.

(k) Under the regulations an operative may choose to opt-out at any time in the future in which case such operative shall not be entitled to receive any employer contributions.

The above arrangements are intended to be generally superior to the minimum statutory provisions. However, nothing within the above shall diminish or detract from the operative's statutory entitlements.

The above arrangements shall apply during Phase Two of the new regulations. April 2019 will see the introduction of Stage Three of the regulations and new arrangements will then apply.

WR22 and WR23 Grievance Procedure and Disciplinary Procedure

The agreement sets out detailed procedures for dealing with both grievances and discipline which have been updated to incorporate the requirements of the 2009 revised ACAS Code of Practice. Employers should be aware that failure to follow the procedures could result in an automatic finding of unfair dismissal at an employment tribunal with any award being increased by up to 25%. Hopefully the new procedures in the agreement are clear but employers are encouraged to seek specialist advice if in doubt. ACAS provide a free employers advice line (0300 123 1100).

WR24 Termination of Employment

Under the Employment Rights Act 1996 neither party has to give any notice to terminate employment where service is less than 1 month. The agreement sets down a minimum of 1 days notice during the first month of employment which could be regarded as a probationary period.

After one months continuous employment the notice required by the operative is 1 week and remains at this level. However, notice required to be given by the employer is initially 1 week but increasing by 1 week for every complete year or service up to a maximum of 12 weeks after 12 years service. This is in accordance with the provisions of the Employments Right Act 1996 and by way of example an operative with 10 years service would be entitled to receive 10 weeks notice. An operative with 12 or more years service would be entitled to receive the maximum notice of 12 weeks.

WR25 Trade Unions

The agreement is negotiated between employers and trade unions and the signatory trade unions are;

Unite
GMB

Employers who incorporate the provisions of the Working Rule Agreement into the terms and conditions of their operatives do not automatically create a "recognition agreement" with any trade union. Full "recognition" implies a formal agreement with the individual employer and the trade union concerned where by the employer undertakes to entering in to negotiations, discussions etc with the trade union and provide the trade with certain facilities. Trade unions wishing to claim "recognition" may do so either by direct representations to the employer or making an application to the Central Arbitration Committee (CAC). Employers faced with such applications should immediately seek specialist advice and guidance.

Where employers are approached by individual trade union officers, most employers have found co-operation to be the most sensible way forward. Often the trade union officer simply wants to visit site and distribute union membership leaflets amongst the workforce.

Age Discrimination and Retirement

When the Age Discrimination Regulations were introduced in 2006 they provide a procedure by which an employer could "retire" and employee at age 65.

From April 2011 the Default Retirement Age (DRA) of 65 has been abolished which means that employers can no longer force employees to retire.

Prior to the 2006 Age Discrimination Regulations, employees lost the right to claim a large number of entitlements on reaching State Retirement age of 65.

But now, all entitlements, which are not limited to, but include the right to make Employment Tribunal claims for example, discrimination, unfair dismissal, redundancy pay etc, continue irrespective of age.

Also entitlement to Statutory Sick Pay (SSP) and other statutory entitlements continue irrespective of age.

In simple terms an employer must treat any employee of, say 75, in exactly the same way as an employee of, say 35.

ACAS provide guidance on working without a default retirement age – http://www.acas.org.uk/media/pdf/d/4/Working_wtihout_the_DRA_Employer_guidance_-_MARCH_2011.pdf)

Basically they advise that employers should hold regular “workplace discussions” with **all** employees, irrespective of age, so as to establish performance, training needs future plans etc. Such discussions could include plans for retirement although it would be quite wrong for the employer to put any pressure on an employee to retire.

Regrettably within the Building and Civil Engineering Construction Industry manual workers become increasingly unable to perform their work satisfactorily with advancing years.

Sometimes this takes the form of general lack of performance/output etc. Sometimes medical conditions mean that the individual is no longer able to perform their duties.

Faced with this situation employer’s must take great care if they are to avoid potentially very expensive claims.

Cases of poor performance/ill health – capability must be dealt with in accordance with the ACAS code of practice No 1.

http://www.acas.org.uk/media/pdf/k/b/Acas_Code_of_Practice_1_on_disciplinary_and_grievance_procedures-accessible-version-Jul-2012.pdf

In all situations employer’s are advised to seek advice from their professional trade association, solicitors or ACAS (free advice 0300 123 1150) before taking irreversible action.

Redundancy

The CIJC Working Rule Agreement does not make any reference to redundancy or redundancy procedures. It is therefore up to the individual employer to determine the appropriate procedure. Where an employer recognises a trade union then consultation with the trade union is a prerequisite of any redundancy situation.

If an employer is proposing to make redundant less than 20 people within a period of 90 days then consultation needs to take place on an individual bases. If more than 20 redundancies are being contemplated within a period of 90 days then there is a statutory requirement for the employer to consult with elected representatives. Employers faced with this situation should seek specialist advice.

Where less than 20 redundancies are being contemplated within a period of 90 days then it is essential the employer follows a fair procedure and consults with individuals otherwise the employer will be vulnerable to claims for unfair dismissal even when genuine redundancy exists.

The introduction of age discrimination legislation in 2006 means it is no longer possible to use “last in, first out” (LIFO) as selection criteria as this discriminates against the younger employee. Employers must adopt an objective system for selection.

APPENDIX 1

Example of an opt-out agreement

I (name) agree that I may work for more than an average of 48 hours a week. If I change my mind, I will give my employer (amount of time - up to three months) notice in writing to end this agreement.

Signed:.....

Date:.....

APPENDIX 2

CONSTRUCTION INDUSTRY JOINT COUNCIL

Joint Secretaries Note

Night Workers and Health Assessments

Under the provisions of the Working Time Regulations 1998 workers who are designated "night workers" must be offered a free health assessment before taking up night work in order to check that they are physically and mentally fit to undertake night work.

Rule 28.2 describes a night worker as:

> 28.2 *A night worker is defined as a worker who works at least 3 hours of his daily working time between the hours of 11.00 pm and 6.00 am on the majority of days worked.*
>
> And

Rule 7.2 refers to Average Weekly Working Hours as:

> 7.2 *Where there are objective or technical reasons concerning the organisation of work, average weekly working hours will be calculated by reference to a twelve month period subject to the employer complying with the general principles relating to the protection of health and safety of workers and providing equivalent compensatory rest periods or, in exceptional cases where it is not possible for objective reasons to grant such periods, ensuring appropriate protection for the operatives concerned.*

And

Rule 7.3 (a) states:

> 7.3 (a) *Be provided with a free health assessment before taking up night work and at intervals of not less than three months during which night work is undertaken.*

In order to assist employers of night workers in complying with the foregoing requirements a sample health screening questionnaire has been jointly agreed and is printed on the reverse side of this note.

APPENDIX 3 - Application for Subsistence Allowance Paid under the National Working Rules

Employer's Name ….....

Employer's Address .....

.....

Employee's Name .....

Date ..... Employers pay ref ..... NIC No .....

To be completed by employee.

I certify that my permanent home address is .....

.....

This is where I normally live. I would travel to work from this address if I had not been given work away from home. The distance I have to travel to the allocated project means that I will live away from home for the length of the project during the working week.

My temporary address is .....

.....

My temporary site is at .....

.....

I have been sent by my employer to work at the above temporary place of work. I have had to incur additional living expenses by taking lodging at the above temporary address.

Yes ☐

I have the following dependants living at my permanent address (wife/husband, common law wife/husband of two years or more, civil partner, dependent child under 18).

(Names) ....

....

OR

APPENDIX 3 - Application for Subsistence Allowance Paid under the National Working Rules - continued

I have no dependants but I have to pay the costs of keeping up a permanent home in the UK while I work away on site. (For example I pay rent or a mortgage, or the costs of gas, electricity, water and council tax to keep my home.)

Yes ☐

Signed .....

I understand that if I sign this form and the statements made on it are not true I may be liable for tax on the lodging/subsistence allowances paid to me.

I agree to tell my employer and HMRC of any change which affect this statement.

Signed ..... Print Name .....

To Be Signed By Employer

I confirm that the permanent address given above by ..... (employee's name) is the address at which we understand they live and is being used as their home address for our personnel records.

Signed ..... Date .....

Role in Employer's company .....

APPENDIX 4 - Model Letter

Dear

Re: TEMPORARY LAY-OFF

Due to inclement weather/temporary shortage of workload* the Company must regretfully inform you that we are implementing the Temporary Lay-off Regulations under Clause 17.4 of the CIJC Working Rule Agreement.

In accordance with the requirements of the Agreement the company is giving you notice that you are to be temporarily laid off from (date). During the first week of lay-off you will not be required to report for work and you will be paid the guaranteed minimum of earnings under the Agreement. After one week you should register as unemployed and receive state benefit.

The company will inform you as soon as further work is available.

The implementation of the lay-off Regulations does not infringe your Statutory Rights in respect of continuous employment with the Company.

Yours sincerely etc.

***Delete as appropriate**

APPENDIX 4a

Redundancy, lay-offs and short-time working

There is no automatic right to lay workers off even where there is no work for them to do. If an employer wants to be able to lay off, there should be an express term in the contract allowing him/her to do so. Even where there is an agreement to lay off, it must not be put into effect for an unreasonably long period or the employees may have the right to regard themselves as redundant.

In many industries which have a history of lay-offs, there may also be some agreement on guarantee pay over and above the statutory minimum. As per the Working Rule Agreement (CIJC).

Where employees are asked to work short-time, this usually means they agree to a shorter working week for a specific period, e.g. a three-day week for the next month. As hours are reduced, so will wages. Any guarantee wages or minimum earnings levels will normally be shelved for the duration of the short-time working.

Whereas lay-off arrangements are usually negotiated in advance, short-time agreements are usually designed to meet a particular situation and are the subject of separate agreements on each occasion they arise.

There are specific statutory provisions which enable an employee who has been kept on short-time or lay-off to claim a redundancy payment even though they have not been dismissed.

To make such a claim, an employee must be:

(a) able to demonstrate that he/she has been laid off. This means that he/she is employed under a contract of employment where pay depends on working and there is no pay if there is no work; or

(b) on short-time working because of a diminution in the work provided by the employer of the kind which the employee is contracted to do. However, a claim for redundancy cannot be made where wages for short-time working amount to half a week's pay or more.

If the employee's situation falls under (a) or (b) above, then he/she may claim redundancy by giving notice to his/her employer that he/she intends to make a claim for a redundancy payment and, when he/she does so, has been laid off or put on short-time working for:

- four or more consecutive weeks of which the last before the service of notice ended on, or not more than four weeks before, the date of the service of notice; or
- a series of six or more weeks (of which not more than three were consecutive) within a period of 13 weeks, where the last week of the series before the service of notice ended on, or not more than four weeks before, the date of the service of notice.

If an employer receives such a claim, he/she can serve a counter-notice contesting liability for redundancy. This must be done within seven days of the notice of intention to claim. If the employer does serve a counter-notice, the employee has no right to claim unless he/she applies to a tribunal.

There is only one defence for the employer: he needs to be able to show that at the date of the employee's notice it was reasonable to expect that the employee, not later than four weeks from the date of the notice would enter into a period of not less than 13 weeks' employment during which he/she would not have been laid off nor put on short-time working. However, this defence can only be used if the employer has issued a valid counter-notice.

The employee must also give notice, either one week or the minimum contractual notice, whichever is the greater, of termination of contract if:

(a) the employer has not served a counter-notice within four weeks of the service of the employee's notice claim; or

(b) the employer has served and then withdrawn a counter-notice within three weeks of that withdrawal; or

(c) the employer has not withdrawn a counter-notice but a tribunal has awarded a redundancy payment within three weeks of the employee being notified of the tribunal's decision.

No account can be taken of any week in which the lay off or short time working was wholly or mainly attributable to a strike or lock-out.

When redundancy does not apply

There are some circumstances in which the employee may have no right to a redundancy payment. The main exclusions are where the employee:

(a) has less than two full years of service with the employer after the age of 18;

(b) is fairly dismissed by the employer before the relevant date*, e.g. for gross misconduct;

(c) refuses an alternative offer of employment made by the employer before the relevant date* which is reasonable in the circumstances and where the new contract either starts as the old one finishes or will commence within four weeks of the relevant date*. For an alternative employment to be reasonable, the provisions of the renewed contract in terms of capacity, place, terms and conditions of employment must be the same as the previous contract or, if not identical, must still represent an offer of suitable employment to the employee;

(d) ordinarily works outside Great Britain;

(e) works under a fixed-term contract of three months or less;

(f) is covered by collective agreements on redundancy who have been excluded from the provisions by an Order made by the Secretary of State for Trade and Industry.

* The relevant date means the date on which the redundancy is due to take place.

APPENDIX 5

WR.1 ENTITLEMENT TO BASIC RATES OF PAY

Following negotiations between the parties to the Construction Industry Joint Council, the Council has adopted recommendations for a two year agreement on pay and other conditions and thereby settles all outstanding claims.

With effect from **Monday 25th June 2018** the following basic pay rates and allowances will apply.

WR.1 ENTITLEMENT TO BASIC RATES OF PAY

Classification	Basic Pay (pence per hour)	Weekly Rates (based on 39 hours)
General Operative	(926)	£361.14
Skill Rate 4	(998)	£389.22
3	(1057)	£412.23
2	(1129)	£440.31
1	(1172)	£457.08
Craft Rate	(1231)	£480.09

These rates are agreed and promulgated on the basis that any increase shall not be reduced by any adjustment in existing contractual bonus schemes.

WR 1.4.2 Apprentice Rates

Stage of Training	Basic Pay (pence per hour)	Weekly Rates (based on 39 hours)
Year 1	(550)	£214.50
Year 2	(660)	£257.40
Year 3 without NVQ 2	(770)	£300.03
Year 3 with NVQ 2	(985)	£384.15
Year 3 with NVQ 3	(1231)	£480.09
On completion with NVQ 2	(1231)	£480.09

APPRENTICES and the NATIONAL MINIMUM WAGE

Employers should note that if an apprentice is in the second or final year of training and aged between 21 and 24 then the National Minimum Wage must apply. For apprentices aged 25 and over and in the second or final year of training the National Living Wage must apply. These are enforceable by HMRC.

Currently the National Minimum Wage for someone aged 21 to 24 is £7.38 per hour and the National Living Wage for someone aged 25 and over is currently £7.83 per hour. These will increase from 1st April 2019.

WR.5 DAILY FARE AND TRAVEL ALLOWANCES (effective Monday 25th June 2018).

The scale for calculating allowances was in 2016 re-calibrated from kilometres to miles. The rates published are for the return journey.

Miles	Travel (Taxed)	Fare (Not Taxed)
9	1.08	4.54
10	1.28	4.91
11	1.48	5.29
12	1.69	5.66
13	1.89	6.03
14	2.09	6.40
15	2.29	6.77
16	2.49	7.13
17	2.69	7.50
18	2.89	7.87
19	3.10	8.24
20	3.30	8.56
21	3.50	8.88
22	3.70	9.19
23	3.90	9.51
24	4.10	9.83
25	4.31	10.15
26	4.51	10.47
27	4.71	10.78
28	4.91	11.10
29	5.11	11.41
30	5.31	11.71
31	5.51	12.00
32	5.72	12.30
33	5.92	12.60
34	6.12	12.88
35	6.32	13.19
36	6.52	13.49
37	6.72	13.78
38	6.92	14.07
39	7.13	14.37
40	7.33	14.67
41	7.53	14.97

Miles	Travel (Taxed)	Fare (Not Taxed)
42	7.73	15.26
43	7.93	15.56
44	8.13	15.86
45	8.33	16.14
46	8.54	16.44
47	8.74	16.74
48	8.94	17.04
49	9.14	17.33
50	9.34	17.63

Having due regard for health and safety an operative may be required to travel distances beyond the published scale. In which case payment for each additional mile should be made based on the difference between the rate for the 49th and 50th mile.

All distances shall be measured utilising the RAC Route Planner/AA Route Planner (or similar) using the post codes of the operative's home address and place of work, based on the most direct route. (WR.5.2).

WR.12 STORAGE OF TOOLS

Employers' maximum liability is £750.00 pa.

WR.15 SUBSISTENCE ALLOWANCE (effective 25th June 2018).

£40.00 per night. (This has been approved by HMRC and is subject to the Operative completing an Application for Subsistence Allowance Form).

WR.20 SICK PAY

WR.20.4 Amount of Payment (Effective 25th June 2018)

Industry sick pay to increase to £130 per week.

WR.21 BENEFIT SCHEMES

WR.21.1 Death benefit is currently £32,500 and doubled to £65,000 if death occurs either at work or travelling to or from work. Such benefit is normally provided through the B&CE Group. The parties to the agreement have agreed to increasing this benefit effective 1 January 2019 to £40,000 doubled to £80,000 if death occurs either at work or travelling to or from work.

With effect from **Monday 24th June 2019** the following basic pay rates and allowances will apply.

WR.1 ENTITLEMENT TO BASIC RATES OF PAY

Classification		Basic Pay (pence per hour)	Weekly Rates (based on 39 hours)
General Operative		(953)	£371.67
Skill Rate	4	(1027)	£400.53
	3	(1087)	£423.93
	2	(1162)	£453.18
	1	(1206)	£470.34
Craft Rate		(1267)	£494.13

WR 1.4.2 Apprentice Rates

Stage of Training	Basic Pay (pence per hour)	Weekly Rates (based on 39 hours)
Year 1	(570)	£222.30
Year 2	(680)	£265.20
Year 3 without NVQ 2	(793)	£309.27
Year 3 with NVQ 2	(1015)	£395.85
Year 3 with NVQ 3	(1267)	£494.13
On completion with NVQ 2	(1267)	£494.13

WR.5 DAILY FARE AND TRAVEL ALLOWANCES

The taxed daily travel allowance will increase by 2.9% in line with the increase in basic pay rates. The non taxed fare allowance will (subject to HMRC approval) increase by the CPI for the 12 month period to March 2019.

New fare & travel allowance scales will be promulgated in May 2019.

WR.12 STORAGE OF TOOLS

Employers' maximum liability £750.00 pa.

WR.15 SUBSISTENCE ALLOWANCE

Subject to HMRC approval, the £40.00 per night allowance will be increased by the CPI for the 12 month period to March 2019 and a new allowance will be promulgated in May 2019.

WR.20 SICK PAY

WR.20.4 Amount of Payment

Industry sick pay will increase to £135 per week.

WR.21 BENEFIT SCHEMES

WR.20.4 Death benefit will be £40,000 and doubled to £80,000 if death occurs either at work or travelling to or from work. Such benefit is normally provided through the B&CE Group

PERIOD OF SETTLEMENT

The Employers shall not be required to consider any application for a change in the Operatives' pay and conditions, which would have effect before Monday 29th June 2020.

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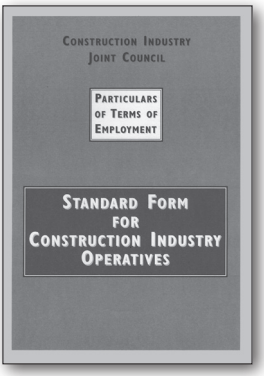

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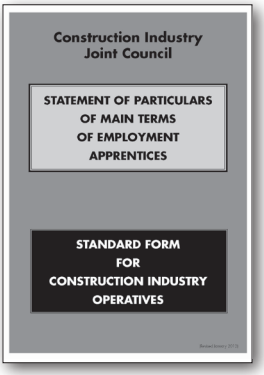

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