

**JOINT CONCILIATION COMMITTEE OF THE  
HEATING, VENTILATING AND DOMESTIC ENGINEERING INDUSTRY**

**COMPRISING:**

Building Engineering Services Association (BESA)  
(formerly Heating and Ventilating Contractors' Association (HVCA))

**107**

Unite – the Union

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**TO EMPLOYERS AND EMPLOYEES IN THE HEATING, VENTILATING, AIR CONDITIONING,  
PIPING AND DOMESTIC ENGINEERING INDUSTRY**

Dear Sir/Madam

**H&V Operative National Agreement – Welplan Supplement –  
Rule E (Welfare Benefits – Entitlement and Payment) – Revision**

**Introduction**

The Association and the Trade Union, as the Parties to the H&V Operative National Agreement, have recently concluded a comprehensive review of Rule E of the Welplan Supplement to the National Agreement, concerning *Welfare Benefits – Entitlement and Payment* under the Welplan Scheme. The purpose of this JCC Letter is to draw these developments to your attention.

This review has been occasioned by a number of factors. Apart from the need for some general up-dating and simplification of previous wording, relevant provisions of Rule E have had to be changed to reflect:

- i** the introduction of the Government's 'Fit Note' scheme for the certification of sickness absence;
- ii** provisions of the age discrimination legislation; and
- iii** a number of important legal decisions concerning sickness absence and annual holiday.

In addition, it has been necessary, in the light of experience of operating the Scheme, to provide an agreed definition of a number of key terms.

**Principal Changes**

The principal changes are:

- i** the inclusion of an agreed definition of key terms such as '*Active Employment*' and '*Accident at Work*';
- ii** revision of the definition of '*Doctor's Certificate*' to reflect the introduction of the Government's 'Fit Note' scheme;
- iii** removal of references to *age 65* as the cut-off point for eligibility for certain benefits, substituting *State Pension Age* instead;
- iv** clarification in rule **E12** of the arrangements applying if an Operative is prevented from taking his holiday by virtue of sickness absence or accident;

- v clarification in rule **E35** of the purpose of the Permanent Total Disability Benefit (PTDB) of the Scheme;
- vi removal of the age-related reduction tapering which previously applied to PTDB payments;
- vii clarification in rule **E41** of the procedure for the assessment of an Operative's eligibility for potential payment of a PTDB; and
- viii clarification at rule **E42** of the benefits that apply under the Scheme to Operatives remaining in employment beyond State pension Age.

The arrangements in the revised text of National Agreement Welplan Supplement Rule E – which is set out in full in the Appendix to this JCC Letter – are permissive. They should not be read as conferring any prescriptive right on any Operative to be retained in active employment by his Employer beyond State Pension Age. That is, and remains, a matter for individual agreement between the Operative concerned and his Employer.

Signed on behalf of and as authorised by  
BUILDING ENGINEERING SERVICES ASSOCIATION  
B. JUDD, Chief Executive

Signed on behalf of and as authorised by  
UNITE – the UNION  
B. McAULAY, National Officer – Construction and Contracting

## **H&V Operative National Agreement Welplan Supplement Rule E – Welfare Benefits – Entitlement and Payment**

- 1** All Operatives shall be entitled to sickness and accident benefit and other welfare benefits under the Scheme as hereinafter provided.

Although this section uses the expressions ‘entitlement’ and ‘eligibility’ to benefits and the ‘liabilities’ of Welplan Ltd, Operatives should note that the award of the following benefits is at the discretion of Welplan Ltd up to a maximum amount from time to time agreed between the Association and the Union (and similar expressions where used in this section in relation to the following benefits shall be construed accordingly):

- i** sickness and accident benefit (see rule **E16**)
- ii** death benefit (see rule **E26**)
- iii** accidental dismemberment benefits (see rule **E34**)
- iv** permanent total disability benefit (see rule **E40**).

### **Rates**

- 2** The rates of welfare benefit shall be:
- a** agreed from time to time between the Association and the Union
  - b** enumerated in an Appendix to the National Agreement
  - c** reviewed to take account of changes in wage rates, income tax, statutory sick pay or in National Insurance sickness, accident and disability benefits.

The amount of death benefit is subject to rules **E26** and **E28**. In addition, there are limits under tax law on the maximum amount of pension and lump sum death benefits that can be paid without incurring a tax charge. (Details are available on request from Welplan).

### **Payment by Welplan Ltd**

- 3** Where an Operative is entitled to welfare benefit(s) under the Scheme, benefit(s) shall be paid by Welplan Ltd subject to the observance of the Scheme by the Employer including the purchase of weekly credits for all Operatives.

### **Payment by Employer(s)**

- 4** Where an Operative is entitled to welfare benefit(s) under the Scheme, benefit(s) shall be paid by the Employer if he has not fulfilled the conditions in rule **E3**. The procedure to be followed should be adapted as necessary and the same conditions for payment of benefits shall apply (see also rule **E26**).

### **Employment Qualification**

- 5** To fulfil the employment qualification (which is not always required) an Operative must at the time of incapacity, disability, accident or death:
- a** be in the active employment of an Employer under the National Agreement; and
  - b** have been in such active employment for at least four weeks of the eight weeks preceding the incapacity, disability, accident or death.

### **Notes:**

**Active Employment:** *Active employment means any period during which an Operative is employed under the National Agreement under a contract of employment as defined in Section 230(2) of the Employment Rights Act 1996, and is either:*

- a available and able to discharge his/her employment duties and/or carry out his/her work, in accordance with the terms of his/her employment contract; or*
- b is unable to discharge his/her contractual duties in circumstances where he/she is entitled to receive payment in respect of sickness and accident benefit under the terms of the National Agreement Supplement.*

*Except that any Operative who is absent by reason of annual leave, bereavement leave (as defined in the National Agreement), maternity, paternity, adoption or parental leave, time off for trade union duties and activities in accordance with the ACAS Code of Practice, public duties for which time off is required under the Employment Rights Act 1996 or any other reason for which the Operative can produce evidence to the satisfaction of the Employer that such absence was due to circumstances beyond the Operative's control shall be deemed to be in active employment for the period of that leave or absence.*

**Service Qualifications:** *If the Employer has properly purchased weekly credits for the Operative he/she will therefore normally have at least four credits in the preceding eight weeks. An Operative entering the Industry for the first time must serve at least four weeks' active employment with an Employer under the National Agreement and have at least four credits in the first eight weeks of employment to be entitled to welfare benefits. Once the four weeks' active employment have been completed, weeks also count where, in accordance with rule **B9**, no credit was purchased because of prolonged absence due to sickness or accident.*

### **Sickness and Accident Benefit**

- 6** The combined payment to which an Operative shall be entitled when sick shall be a sum equal to any statutory sick pay due under the regulations made under the Statutory Sick Pay Act 1994, plus any sickness and accident benefit due under rule **E2** for the same period.
- 7** An Operative shall be entitled to sickness and accident benefit under the Scheme if:
  - a** he/she fulfils the employment qualification in rule **E5** and
  - b** as a result of bodily injury or sickness he/she is unable to attend work or to engage in any gainful occupation for wage or profit and
  - c** he/she provides, for periods of absence for sickness/accident of four complete days up to and including seven complete days, a self-certificate of incapacity or, for periods of absence for sickness/accident in excess of seven days, a self-certificate of incapacity for the first seven days and thereafter a certificate of incapacity from a registered medical practitioner.

#### **Note:**

**Self Certificate:** *Any one of the following will be accepted as a self-certificate:*

- i** *the Employer's own form of self-certificate obtainable from the Employer*
- ii** *HM Revenue and Customs (HMRC) form of self-certificate (SC2), available from doctors' surgeries, hospitals, Jobcentre Plus and HMRC offices or their website*
- iii** *Welplan form of self-certificate printed on the reverse side of the **Welplan** sickness and accident benefit claim form, obtainable from the Employer.*

**Doctor's Certificate:** *Evidence from a registered medical practitioner may be:*

- i** *a copy of a Statement of Fitness for Work (MED3), or*
- ii** *the **Welplan** supplementary claim form.*

- 8** Subject to rule **E7**, payment of benefit shall:
  - a** begin on the fourth day of disability, i.e. there will be no payment in respect of the first three days of disability unless the disability lasts at least four weeks (as defined in rule **E9**), in which case payment will be made retrospectively for the first three days of disability,
  - b** be calculated on a seven day week basis (including Saturday and Sunday),
  - c** be paid for a maximum period of up to 52 weeks for any one continuous period of disability,

**d** be paid (in cases where an Operative's registered medical practitioner has recommended a phased return to work, i.e., a temporary period of part-time working involving complete days at work) only for complete days of absence.

**NB:** No sickness and accident benefit shall be paid when an Operative works reduced hours daily (in cases when his/her registered medical practitioner has recommended a temporary period of altered or reduced hours of daily attendance).

- 9** Periods of disability certificated by self-certificates or a registered medical practitioner separated by up to eight weeks which qualify to be paid under rule **E7** shall be added together to form one period of disability.
- 10** No benefit shall be payable for a disability which results from or is caused directly or indirectly by:
- a** self-inflicted injury or illness while sane or insane
  - b** insurrection or war whether war has been declared or not, or any act incidental thereto, or participation in any riot or strike.
- 11** No benefit shall be payable for any disability which commences while an Operative is on strike whether official or unofficial, but benefit shall be payable if the strike commences after an Operative suffers a disability. Benefit shall always be payable in respect of any period of a disability which continues after the end of a strike: in which case the first three days of disability referred to in rule **E8** shall include days of disability during the period of the strike.
- 12**
- a** Sickness and accident benefit may be paid to an Operative on holiday, if he is prevented from taking his holiday by virtue of the period of sickness absence or accident, provided a doctor's certificate is furnished in accordance with rule **E7c**.
  - b** Days of disability whilst on holiday shall count towards the three waiting days only if the Operative has elected to take those days as sick leave rather than holiday.
  - c** Where sickness absence prevents holiday being taken, holiday pay shall be held over and paid when the holiday is taken.
- 13** Rules **E6-E12** shall be reviewed following any change by the Government to the system of Statutory Sick Pay or other statutory sickness and accident and disability benefits and modifications to these rules shall be effective from the same date as the Government changes.
- 14** Liability for payment of benefit shall be in accordance with rules **E3** and **E4**.
- 15** Where Welplan Ltd is liable for payment the Operative must submit to his/her Employer a self-certificate of incapacity and benefit will only be payable if this is done promptly. Payment shall be made weekly to the Operative through his/her Employer.
- 16** Payment by Welplan Ltd shall be at the absolute discretion of the trustee company, Welplan Ltd, both as to eligibility and amount.
- 17** Where an Operative is eligible for benefit in respect of a disability and his/her employment is (for any reason) terminated during the period of the disability, this shall not prejudice or otherwise affect the Operative's continuing eligibility for benefit in respect of that disability.
- 18** If there is insufficient medical evidence available to substantiate continued payment of benefit under rule **E17**, a supplementary claim form will be issued by Welplan Ltd and must be completed by a registered medical practitioner and returned to Welplan Ltd before further payments are made.
- 19** In all cases, Welplan Ltd (or the Employer) shall have the right to require the Operative to undergo a medical examination by an independent registered medical practitioner to obtain a second opinion.

#### **Death Benefit**

- 20** All Operatives shall be entitled to death benefit under the Scheme subject to the conditions set out below.

- 21** Where death arises from an accident at work or travelling to or from work the Operative shall be eligible for death benefit (regardless of age or service) if at the time of the accident he/she was in the active employment of an Employer under the National Agreement.

**Note**

**Accident at Work:** *Death shall be deemed to have arisen at work from an ‘accident at work’ where death occurred as a direct result of a specific incident which resulted in physical harm to the Operative and which took place either whilst the Operative was lawfully present on work premises or during the course of an Operative carrying out his duties under his contract of employment. For the avoidance of doubt this does not include death following the development of an occupational illness over a period of time, including death following an illness which has arisen as a direct result of the specific incident.*

- 22** Where death arises from any other cause the Operative shall (subject to rule **E28**) be eligible for death benefit if, at the time of death, he/she was under the State Pension Age and he/she either:

- a**
  - i** fulfilled the employment qualification in rule **E5**; and
  - ii** had completed at least six months’ active employment in the Industry in the three years prior to death, or
- b** would have fulfilled the conditions in rule **E22a** but for the fact that within four weeks prior to death his/her employment had been terminated and he/she had remained unemployed up to the time of death.

Operatives over the State Pension Age who fulfil the provisions outlined at **E22a** and **b** above may also qualify for death benefit.

- 23** Death benefit shall normally only be payable to the Operative’s dependants (if any) *i.e.* normally to such person or persons who are wholly or partially dependent upon the Operative for their maintenance.

- 24** Liability for payment of death benefit shall be in accordance with rules **E3** and **E4**.

- 25** Where Welplan Ltd is liable for payment, a claim for death benefit must be submitted on a form obtained from Welplan Ltd, together with an extract of the Operative’s birth certificate, death certificate and marriage certificate (where appropriate).

- 26** Payment by Welplan Ltd shall be at the absolute discretion of the trustee company, Welplan Ltd, both as to eligibility and amount.

The amount of the death benefit shall have regard to any prior payment in respect of accidental dismemberment benefits and/or permanent total disability benefit under the Scheme and to the period between payment of such benefits and the death (see rules **E2**, **E28**, **E29-34** and **E35-40**).

- 27** Where the Employer is liable for payment, the Operative’s dependants may seek the guidance of the trustee company as to their entitlement.

**28 Disability Waiver**

Where an Operative

- a** suffers continuing disability (subject to reasonable proof) after eligibility for sickness and accident benefit has ceased; and
- b** at the time of the disability, he/she:
  - i** fulfilled the employment qualification in rule **E5**; and
  - ii** had completed at least six months’ active employment in the Industry in the three years prior to the disability; and
- c** at the time of death was under the State Pension Age

he/she shall while so disabled, regardless of whether or not his/her employment is terminated, be eligible for death benefit (subject to rule **E41**).

Under this rule the amount of death benefit shall (subject to rules **E2** and **E26**) be at the rate in force at the time of death.

#### **Accidental Dismemberment Benefits**

**29** All Operatives shall be entitled to accidental dismemberment benefits under the Scheme subject to the conditions set out below.

**30** In all cases payment of benefit is conditional upon loss of limbs or digits or sight occurring by accidental means within 90 days of the accident, but excluding self-inflicted injury, insurrection, war or riot, disease or infection, bodily or mental infirmity or dismemberment caused by medical or surgical treatment, commission of assault or felony by the Operative, taking of poison or inhalation of gas.

**31** An Operative shall be eligible for benefit(s) if he/she either:

**a** fulfils the employment qualification in rule **E5** and (subject to rule **E30**) loses by accidental means one or more limbs or one or more digits or sight of one or both eyes

or

**b** would have fulfilled the qualification in rule **E31a** but for the fact that within four weeks prior to accidental injury his/her employment had been terminated and he/she remained unemployed up to the time of the accidental injury.

**Note:** *The benefit entitlement is halved for loss of sight in one eye only.*

**32** Liability for payment of accidental dismemberment benefits shall be in accordance with rules **E3** and **E4**.

**33** Where Welplan Ltd is liable for payment, a claim must be submitted on a form obtained from Welplan Ltd together with proof of claim substantiated by such medical evidence as shall be required by Welplan Ltd.

**34** Payment by Welplan Ltd shall be at the absolute discretion of the trustee company, Welplan Ltd, both as to eligibility and amount.

#### **Permanent Total Disability Benefit**

**35** All Operatives shall be entitled to permanent total disability benefit under the Scheme subject to the conditions set out below. Permanent total disability benefit is intended as a contribution towards compensating an Operative for his/her reduced earnings potential following permanent total disablement. Entitlement ceases on reaching State Pension Age or (if disablement arises from an accident at work or while travelling to or from work) five years after reaching State Pension Age.

**36** In all cases, subject to rule **E35**, payment of benefit is conditional upon permanent total disablement from gainful occupation, by accidental or natural causes, but excluding self-inflicted disablement or disablement resulting from insurrection, war or riot, or the commission of assault or felony by the Operative.

**37** An Operative shall be eligible for the benefit when he/she:

**a i** has fulfilled the employment qualification in rule **E5** and (subject to rule **E36**) is permanently and totally disabled from gainful occupation; and

**ii** has received the maximum sickness and accident benefit entitlement (under rule **E8**)

or

**b** would have fulfilled the qualifications in rules **E37a i** and **ii** but for the fact that within four weeks prior to the expiry date for maximum sickness and accident benefit entitlement his/her employment had been terminated and he/she had remained unemployed up to the time of the disablement.

**38** Liability for payment of permanent total disability benefit shall be in accordance with rules **E3** and **E4**.

**39** Where Welplan Ltd is liable for payment, a claim must be submitted on a form obtained from Welplan Ltd, together with proof of the claim substantiated by such medical evidence as shall be required by Welplan Ltd.

**40** Payment by Welplan Ltd shall be at the absolute discretion of the trustee company, Welplan Ltd, both as to eligibility and amount.

**Effect of Payment of Permanent Total Disability Benefit on Entitlement to Death Benefit (Residual Death Benefit)**

**41** Subject to rules **E35-E37**, after an incapacitated Operative has received 52 weeks' sickness and accident benefit he/she will be invited to be assessed for eligibility for payment of permanent total disability benefit.

If the Operative opts not to be assessed or, after assessment, is found not to be permanently totally disabled, he/she will be entitled to ongoing death benefit cover under rule **E28** ('Disability Waiver') or, if he/she returns to active employment, under rules **E21** and **E22**.

Where an Operative is assessed for permanent total disability benefit and is found not to be permanently totally disabled, and therefore entitled to Disability Waiver, he/she cannot subsequently qualify for permanent total disability benefit.

Payment of permanent total disability benefit shall restrict the Operative's entitlement to death benefit under rule **E28** as follows:

- i** the amount of death benefit is reduced by the amount of the permanent total disability benefit paid; and
- ii** the maximum duration of the death benefit cover shall be no more than three years, calculated from the date of the total disability payment, or until the attainment of State Pension Age, whichever is the earlier.

**Operatives remaining in Active Employment beyond State Pension Age**

**42** Sickness and accident benefit, accidental dismemberment benefits, death benefit (under rule **E21** and **E22**) and permanent total disability benefit arising from an occupational accident (under rule **E35**) shall be provided for Operatives in active employment beyond State Pension Age. For the avoidance of doubt, provision of disability waiver (rule **E28**), permanent total disability benefit where disability is not due to an occupational accident (rule **E35**) and residual death benefit (rule **E41**) are excluded from these arrangements as entitlement shall cease at the State Pension Age.

