1971. No. 336 [NC]

WAGES COUNCILS

Wages Regulation (Catering)

ORDER, DATED 29TH OCTOBER 1971, MADE BY THE MINISTRY OF HEALTH AND SOCIAL SERVICES UNDER THE WAGES COUNCILS ACT (NORTHERN IRELAND) 1945.

The Ministry of Health and Social Services, in exercise of the powers conferred on it by Section 10 of the Wages Councils Act (Northern Ireland) 1945(a), hereby makes the following Order to give effect to wages regulation proposals received from the Catering Wages Council (Northern Ireland):—

Citation

1. This Order may be cited as the Catering Wages Regulation (Holidays) Order (Northern Ireland) 1971.

Commencement

2. The wages regulation proposals set out in the Schedule shall come into operation on the specified date and on the day immediately preceding that date the Catering Wages Regulation (Holidays) Order (Northern Ireland) 1968(b) shall cease to have effect.

Interpretation

3. In this Order the expression "the specified date" means the 23rd day of November 1971, provided that where, as respects any worker who is paid wages at intervals not exceeding seven days, that date does not correspond with the beginning of the period for which the wages are paid, the expression "the specified date" means as respects that worker, the beginning of the next such period following that date.

Sealed with the Official Seal of the Ministry of Health and Social Services for Northern Ireland this 29th day of October 1971.

(L.S.)

J. H. Scott,
Assistant Secretary.

(a) 1945. c. 21.

(b) S.R. & O. (N.I.) 1968, No. 222.

SCHEDULE

The following provisions as to holidays and holiday remuneration shall be substituted for the provisions as to holidays and holiday remuneration set out in the Catering Wages Regulation (Holidays) Order (Northern Ireland) 1968 (Order N.I.C. (4)):—

Holidays and Holiday Remuneration

PART I

APPLICATION

Paragraph 1.

This Schedule applies to every worker for whom statutory minimum remuneration has been fixed.

PART II

CUSTOMARY HOLIDAYS

Paragraph 2.

(1) An employer shall allow to every worker to whom this Schedule applies a holiday (hereinafter referred to as a "customary holiday") in each year on the days specified in the following sub-paragraph provided that the worker has been in his employment for a period of not less than four weeks immediately preceding the customary holiday and has worked for the employer during the whole or part of that period and is in his employment on the day of the customary holiday.

(2) The said customary holidays are:—

Christmas Day (or, if Christmas Day falls on a Sunday, such other weekday as may be appointed by national proclamation, or, if none is so appointed, the next following Tuesday), Boxing Day, Easter Monday, Easter Tuesday and two other days (being days on which the worker normally works) in the course of a calendar year to be fixed by the employer and notified to the worker not less than three weeks before the holiday.

(3) Notwithstanding the preceding provisions of this paragraph, an employer may (except where in the case of a woman or a young person such a requirement would be unlawful) require a worker who is otherwise entitled to any customary holiday under the foregoing provisions to work thereon and, in lieu of any customary holiday on which he so works, the worker shall be entitled to be allowed a day's holiday (hereinafter referred to as a "holiday in lieu of a customary holiday") on a weekday within the period of 28 days next ensuing.

Provided that if payment to the worker in respect of time worked on the customary holiday is made at the overtime rate appropriate to work on a customary holiday a holiday in lieu of a customary holiday need not be allowed to the worker.

PART III

ANNUAL HOLIDAYS

Paragraph 3.

(1) In addition to the customary holidays specified in Part II, an employer shall, during the holiday season (as defined in paragraph 14) allow a holiday (hereinafter referred to as an "annual holiday") to every worker in his employment to whom this Schedule applies who was employed by him during the 12 months immediately preceding the commencement of the holiday

season (hereinafter referred to as the "qualifying period") for any of the periods of employment (calculated in accordance with the provisions of paragraph 12) specified below, and the duration of the annual holiday shall be related to the period of employment during the qualifying period as follows:—

Period of employment during the qualifying period	Duration of annual holiday for a worker whose normal working week is		
	6 days	5 days	4 days or less
At least 8 weeks	2 days	1 day	1 day
„ 12 „	3 „	2 days	2 days
„ 16 „	4 „	3 „	2 „
„ 20 „	5 „	4 „	3 „
„ 24 „	6 „	5 „	4 „
„ 28 „	7 „	6 „	4 „
„ 32 „	8 „	6 „	5 „
„ 36 „	9 „	7 „	5 „
„ 40 „	10 „	8 „	6 „
„ 44 „	11 „	9 „	7 „
„ 48 „	12 „	10 „	8 „

(2) Notwithstanding the provisions of sub-paragraph (1) the number of days of annual holiday to which a worker shall be entitled in any holiday season shall not exceed in the aggregate twice the period constituting the worker's normal working week.

(3) The duration of a worker's annual holiday in the holiday season ending on 30th November 1971 shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order N.I.C. (4) between 1st March 1971 and the date on which the provisions of this Schedule become operative.

Paragraph 4.

Annual holidays shall be allowed on consecutive working days, being days on which the worker is normally required to work, and days of annual holiday shall be treated as consecutive notwithstanding that a customary holiday or a holiday in lieu of a customary holiday intervenes. Provided that where the number of days of annual holiday for which a worker has qualified exceeds the number of days constituting his normal working week the annual holiday may be allowed in two periods of such consecutive working days if one of such periods is not less than the number of days constituting the worker's normal working week.

ADDITIONAL ANNUAL HOLIDAYS

Paragraph 5.

(1) Subject to the provisions of this paragraph, in addition to the holidays specified in Paragraph 3, an employer shall in the year commencing on 1st March 1971 and in each succeeding year commencing on 1st March, allow a further annual holiday (hereinafter referred to as an "additional annual holiday") to every worker in his employment to whom this Schedule applies who at 28th February immediately preceding the relevant year has been continuously employed by him for not less than two years and the duration of the additional annual holiday shall be in accordance with the next following table:—

Period of employment at 28th February immediately preceding the year in which the additional annual holiday is to be allowed	*Duration of additional annual holiday*
At least 5 years	*1 normal working week*
„ *4* „	*4 days*
„ *3* „	*3 days*
„ *2* „	*2 days*

Paragraph 6.

Where a worker becomes entitled to any days of additional annual holiday in accordance with the provisions of paragraph 5 those days of additional annual holiday shall be allowed by the employer—

either on working days which need not be consecutive, to be fixed by agreement between the employer and the worker, during the period 1st December to 28th February immediately following 1st March upon which the worker becomes entitled as aforesaid, or

where the pattern of trade in the establishment so permits on working days (to be fixed by agreement between the employer and the worker) which need not be consecutive, during the holiday season.

Paragraph 7.

An employer shall give to a worker reasonable notice of the commencing date or dates and of the duration of his annual holiday *and the date or dates of his additional annual holiday.* Such notice may be given individually to the worker or by the posting of a notice in the place where the worker is employed.

Part IV

HOLIDAY REMUNERATION

A—Customary Holidays

Paragraph 8.

(1) For each day of customary holiday or holiday in lieu of a customary holiday to which a worker is entitled under Part 2 he shall be paid by the employer as holiday remuneration one day's holiday pay (as defined in paragraph 14).

(2) Notwithstanding the provisions of sub-paragraph (1) payment of the said holiday remuneration shall be subject to the condition that the worker presents himself for employment at the usual starting hour on the first working day on which work is available to him following the customary holiday or, if he fails to do so, such failure is by reason of proved illness of the worker or with the consent of the employer.

Provided that when two customary holidays occur on successive days (or so that no working day intervenes) the said condition shall apply only to the second customary holiday.

(3) Holiday remuneration in respect of any customary holiday shall be paid by the employer to the worker on the pay day on which the wages for the pay week which includes the customary holiday are paid.

(4) Holiday remuneration in respect of any holiday in lieu of a customary holiday shall be paid on the pay day on which the wages for the week which includes that holiday in lieu are paid.

Provided that the said payment shall be made immediately upon the termination of the worker's employment in the case where he ceases to be employed before being allowed such holiday in lieu and in that case the condition specified in sub-paragraph (2) shall not apply.

B—ANNUAL HOLIDAYS

Paragraph 9.

(1) Subject to the provisions of paragraph 10, a worker qualified to be allowed an annual holiday *or additional annual holiday* under this Schedule shall be paid by his employer in respect thereof, on the last pay day preceding such annual holiday, as holiday remuneration one day's holiday pay (as defined in paragraph 14) in respect of each day thereof.

(2) Where under the provisions of paragraph 4 an annual holiday is allowed in two separate periods, the holiday remuneration shall be apportioned accordingly.

Paragraph 10.

Where accrued holiday remuneration has been paid by the employer to the worker (in accordance with paragraph 11 or in accordance with the provisions of Order N.I.C. (4)) in respect of employment during any of the periods referred to in that paragraph or that Order, the amount of holiday remuneration payable by the employer in respect of any annual holiday for which the worker has qualified by reason of employment during any of the said periods shall be reduced by the amount of the said accrued holiday remuneration unless that remuneration has been deducted from a previous payment of holiday remuneration made under the provisions of this Schedule.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

Paragraph 11.

(1) If a worker ceases to be employed before being allowed or entitled to be allowed an annual holiday the employer shall, immediately on the termination of the employment (hereafter called "the termination date"), pay to the worker as accrued holiday remuneration:—

(a) in respect of any period of employment occurring before 1st March immediately preceding the termination date, an amount equal to the holiday remuneration to which the worker would have been entitled under the provisions of paragraph 9 if he had been allowed an annual holiday in respect of that period of employment at the termination date, LESS any holiday remuneration already paid for any day or days of annual holiday allowed subsequently to 1st March aforesaid in respect of that period of employment and,

(b) in respect of any period of employment since 1st March immediately preceding the termination date, an amount equal to one day's holiday pay (as defined in paragraph 14) multiplied by the number of days of annual holiday to which the worker would have been entitled under the provisions of paragraph 3 if by virtue of such period of employment he could have taken an annual holiday at the termination date, LESS any accrued holiday remuneration already paid by the employer to the worker in respect of that period.

(2) If a worker ceases to be employed in any calendar year before being allowed the additional annual holidays for which he has qualified under the provisions of Part III the employer shall, on the termination date, pay to the worker as accrued holiday remuneration one day's holiday pay (as defined in paragraph 14) for each of the days for which he has so qualified LESS any holiday remuneration already paid for any day or days of additional annual holiday allowed between 1st March immediately preceding the termination date and that date.

Provided that—

(i) the amount of the accrued holiday remuneration payable to a worker who leaves his employment without the consent of his employer before giving one week's notice of termination of employment or before one

week has elapsed from the time of giving such notice shall be the amount payable under the foregoing provisions of this Schedule less an amount equal to the holiday remuneration which would be payable to him if at the termination of his employment he had been allowed an annual holiday of an equivalent number of days as constituted his normal working week;

(ii) accrued holiday remuneration shall not be payable where a worker is dismissed on the ground either of dishonesty or of misconduct and is so informed by the employer at the time of dismissal;

(iii) where, during the period or periods in respect of which the said accrued holiday remuneration is payable, the worker has been allowed any day or days of holiday for which he had not qualified under the provisions of this Schedule, any accrued holiday remuneration payable as aforesaid shall be reduced by the amount of any sum paid by the employer to the worker in respect of such day or days of holiday.

PART V

GENERAL

Paragraph 12.

For the purpose of calculating any period of employment qualifying a worker for an annual holiday *or to an additional annual holiday* or for any accrued holiday remuneration under this Schedule, the worker shall be treated—

(a) as if he were employed for a week in respect of any week in which—

(i) he has worked for the employer for not less than twenty hours and has performed some work to which statutory minimum remuneration applies;

(ii) he has been absent throughout the week by reason of proved illness of or accident to the worker but not exceeding twelve weeks in the aggregate in the qualifying period or, where under paragraph 9 accrued holiday remuneration is payable on the termination of the employment, in the 12 months immediately preceding the termination of the employment.

(b) as if he were employed on any day of holiday allowed under the provisions of this Schedule and, for the purposes of the provisions of sub-paragraph (a), a worker who is absent on such a holiday shall be treated as having worked the number of hours ordinarily worked by him on that day of the week for the employer on work to which statutory minimum remuneration applies.

Paragraph 13.

Where any day of holiday allowed to any worker under this Schedule falls upon a day of holiday or half-holiday to which the worker may be entitled under any enactment other than the Wages Councils Act (Northern Ireland) 1945, that holiday or half-holiday shall be treated as part of the holiday allowed under this Schedule.

DEFINITIONS

Paragraph 14.

NORMAL WORKING WEEK means the number of days on which the worker has most frequently worked in the week in the employment of the employer in the qualifying period or, where under paragraph 11 accrued holiday remuneration is payable on the termination of the employment, in the twelve months immediately preceding the date of the termination of the employment.

Provided that—

(i) part of a day shall count as a day;

(ii) no account shall be taken of any week in which the worker did not perform any work for which statutory minimum remuneration has been fixed.

WEEK means "pay week."

HOLIDAY SEASON means the period commencing on 1st March and ending on 30th November each year.

ONE DAY'S HOLIDAY PAY means the appropriate proportion of the worker's weekly remuneration, that is to say,

where the worker's normal working week is six days	..	one-sixth
" " " five "	..	one-fifth
" " " four "	..	one-quarter
" " " three "	..	one-third
" " " two "	..	one-half
" " " one day	..	the whole

and, in this definition, "weekly remuneration" means the remuneration which the worker would be entitled to receive from his employer at the date of the annual holiday or of the termination of his employment, as the case may be, if working his normal working week and the daily number of hours normally worked by him (exclusive of overtime) and if paid at the appropriate rate of statutory minimum remuneration for work for which such remuneration is payable and at the same rate for any work for which the said remuneration is not payable.

STATUTORY MINIMUM REMUNERATION means minimum remuneration (other than holiday remuneration) which has been fixed by a wages regulation order made by the Ministry of Health and Social Services to give effect to proposals of the Wages Council.

EXPLANATORY NOTE

(This note is not part of the Order, but is intended to indicate its general purport.)

This Order, which comes into operation on 23rd November 1971, sets out the holidays which an employer is required to allow to workers and the remuneration payable for those holidays in substitution for the holidays and holiday remuneration fixed by the Catering Wages Regulation (Holidays) Order (Northern Ireland) 1968 (Order N.I.C. (4)).

Order N.I.C. (4) is revoked.

New provisions in the Schedule are printed in italics.