STATUTORY INSTRUMENTS

1970 No. 606

WAGES COUNCILS

The Wages Regulation (Aerated Waters) (England and Wales) (Holidays) Order 1970

Made - - -	20*th April* 1970
Coming into Operation	20*th May* 1970

Whereas the Secretary of State has received from the Aerated Waters Wages Council (England and Wales) the wages regulation proposals set out in the Schedule hereto ;

Now, therefore, the Secretary of State in exercise of her powers under section 11 of the Wages Councils Act 1959(**a**), and of all other powers enabling her in that behalf, hereby makes the following Order :—

1. This Order may be cited as the Wages Regulation (Aerated Waters) (England and Wales) (Holidays) Order 1970.

2.—(1) In this Order the expression "the specified date" means the 20th May 1970, 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.

(2) The Interpretation Act 1889(**b**) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament and as if this Order and the Order hereby revoked were Acts of Parliament.

3. The wages regulation proposals set out in the Schedule hereto shall have effect as from the specified date and as from that date the Aerated Waters Wages Council (England and Wales) Wages Regulation (Holidays) Order 1954(**c**) shall cease to have effect.

Signed by order of the Secretary of State.

20th April 1970.

A. A. Jarratt,
Deputy Under Secretary of State,
Department of Employment and Productivity.

(**a**) 1959 c. 69.
(**b**) 1889 c. 63.
(**c**) S.I. 1954/609 (1954 II, p. 2491).

Article 3 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 Aerated Waters Wages Council (England and Wales) Wages Regulation (Holidays) Order 1954 (hereinafter referred to as "Order A. (51)").

PART I

APPLICATION

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

PART II

CUSTOMARY HOLIDAYS

2.—(1) An employer shall allow to every worker in his employment to whom this Schedule applies (except workers who are not full time workers and workers who are normally employed as driver-salesmen or delivery workers), 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 holiday and has worked for the employer during the whole or part of that period and (unless excused by the employer or absent by reason of the proved illness of, or accident to, the worker) has worked for the employer throughout the last six working days on which work was available to him immediately preceding the customary holiday.

(2) The said customary holidays are:—

(*a*) Christmas Day (or, if Christmas Day falls on a Sunday, such weekday as may be appointed by national proclamation, or, if none is so appointed, the next following Tuesday), Boxing Day, Good Friday, Easter Monday, Whit Monday (or where another day is substituted therefor by national proclamation, that day), August Bank Holiday and any day proclaimed as an additional Bank Holiday or as a public holiday throughout England and Wales, or

(*b*) in the case of each of the said days such weekday as may be substituted therefor, being either a day recognised by local custom as a day of holiday in substitution for the said day or a day agreed between the employer and the worker or his representative.

(3) Notwithstanding the preceding provisions of this paragraph, an employer may (except where in the case of a woman or young person such a requirement would be unlawful) require a worker who is otherwise entitled to any customary holiday under the foregoing provisions of this Schedule 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 being a day upon which he would normally work, within the period of four weeks next ensuing.

(4) A worker who is required to work on a customary holiday shall be paid:—

(*a*) for all time worked thereon at the minimum rate then appropriate to the worker for work on a customary holiday; and

(*b*) in respect of the holiday in lieu of the customary holiday, holiday remuneration in accordance with paragraph 7 of this Schedule.

PART III

ANNUAL HOLIDAY

3.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph and to the provisions of paragraph 4, in addition to the holidays specified in Part II of this Schedule, an employer shall, between the date on which this Schedule becomes effective and 26th October 1970, and in each succeeding year between 31st March and the Monday next preceding 31st October, 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 in that year for any of the periods of employment set out in the table below, and the duration of the annual holiday shall in the case of each such worker be related to that period as follows:—

Period of employment	Duration of annual holiday for workers with a normal working week of—			
	Six days	Five days	Four days	Three days or less
Column 1	Column 2	Column 3	Column 4	Column 5
At least 48 weeks ...	12 days	10 days	8 days	6 days
„ „ 44 „ ...	11 „	9 „	7 „	5 „
„ „ 40 „ ...	10 „	8 „	6 „	5 „
„ „ 36 „ ...	9 „	7 „	6 „	4 „
„ „ 32 „ ...	8 „	6 „	5 „	4 „
„ „ 28 „ ...	7 „	5 „	4 „	3 „
„ „ 24 „ ...	6 „	5 „	4 „	3 „
„ „ 20 „ ...	5 „	4 „	3 „	2 „
„ „ 16 „ ...	4 „	3 „	2 „	2 „
„ „ 12 „ ...	3 „	2 „	2 „	1 day
„ „ 8 „ ...	2 „	1 day	1 day	1 „
„ „ 4 „ ...	1 day	1 „	—	—

(2) Notwithstanding the provisions of the last foregoing sub-paragraph:—

(*a*) the number of days of annual holiday which an employer is required to allow to a worker in any holiday season shall not exceed in the aggregate twice the number of days constituting the worker's normal working week;

(*b*) the duration of the worker's annual holiday during the holiday season ending on the 26th October 1970, shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order A.(51), as amended by Order A.(75), between the 31st March 1970, and the date on which this Schedule become effective.

3. In this Schedule the expression "holiday season" means in relation to an annual holiday during the year 1970 the period commencing on 31st March and ending on 26th October 1970, and in relation to each subsequent year the period commencing on 31st March and ending on the Monday next preceding 31st October in that year.

4.—(1) Subject to the provisions of this paragraph, an annual holiday shall be allowed on consecutive working days, being days on which the worker is normally called upon to work for the employer.

(2) For the purposes of this paragraph, days of annual holiday shall be treated as consecutive notwithstanding that a day of holiday allowed to a worker under Part II of this Schedule, a day referred to in sub-paragraph (5)(*b*) of this paragraph or a day upon which he does not normally work for the employer intervenes.

(3) 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 holiday may be allowed in two periods, so however that when a holiday is so allowed—

(*a*) one of the periods consisting of not less than the number of days constituting the worker's normal working week shall be allowed on consecutive working days during the holiday season; and

(*b*) the other period, notwithstanding paragraph 3 of this Schedule, may be allowed *on working days which need not be consecutive either during the holiday season or before the beginning of the next following holiday season.*

(4) Where a day of holiday allowed to a worker under Part II of this Schedule immediately precedes a period of annual holiday or occurs during such a period and the total number of days of annual holiday required to be allowed in the period under the foregoing provisions of this paragraph, together with any such day of holiday allowed under Part II of this Schedule, exceeds the number of days constituting the worker's normal working week then, notwithstanding the foregoing provisions of this paragraph, the duration of that period of annual holiday may be reduced by one day and in such a case one day of annual holiday may be allowed on any working day (not being the worker's weekly short day) in the holiday season (or before the beginning of the next following holiday season where the period of annual holiday is allowed in accordance with sub-paragraph (3) of this paragraph).

(5) A day of annual holiday under this Schedule:—

(*a*) may be allowed on a day on which the worker is entitled to a half-holiday under any enactment other than the Wages Councils Act 1959;

(*b*) shall not be allowed on any whole day of holiday to which the worker is so entitled.

5. An employer shall give to a worker reasonable notice of the commencing date or dates and duration of the period or periods of his 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.

6.—(1) *Subject to the provisions of this paragraph and in addition to the holidays provided for in paragraphs 2 and 3, an employer shall allow a further annual holiday (hereinafter referred to as an "additional annual holiday") amounting to the number of days constituting the worker's normal working week to every worker in his employment to whom this Schedule applies and whose employment with the employer has continued throughout the appropriate period as follows:—*

(*a*) *during the 12 months commencing on 31st March 1970—not less than 5 years' continuous employment immediately preceding 31st March 1970;*

(*b*) *during the 12 months commencing on 31st March 1971—not less than 4 years' continuous employment immediately preceding 31st March 1971; and*

(*c*) *during the 12 months commencing on 31st March 1972 and on 31st March in each succeeding year—not less than 3 years' continuous employment immediately preceding 31st March 1972 and 31st March in each succeeding year.*

(2) *Days of additional annual holiday shall be allowed in the holiday season on consecutive working days being days on which the worker normally works for the employer.*

PART IV

HOLIDAY REMUNERATION

A. CUSTOMARY HOLIDAYS AND HOLIDAYS IN LIEU OF CUSTOMARY HOLIDAYS

7.—(1) Subject to the provisions of this paragraph, for each day of holiday to which a worker is entitled under Part II of this Schedule he shall be paid by the employer holiday remuneration equal to the appropriate statutory minimum remuneration to which he would have been entitled as a time worker if the day had not been a day

of holiday and he had been employed on work for which statutory minimum remuneration is payable for the time usually worked by him on that day of the week:

Provided that payment of the said holiday remuneration is subject to the condition that the worker (unless excused by the employer or absent by reason of the proved illness of, or accident to, the worker) presents himself for employment at the usual starting hour on the first two working days following the holiday and works throughout those days.

(2) Holiday remuneration in respect of any customary holiday shall be paid by the employer to the worker on the day on which wages are paid for the second working day following the said holiday.

(3) The holiday remuneration in respect of any holiday in lieu of a customary holiday shall be paid on the pay day on which the wages are paid for the second working day following the holiday in lieu of the customary holiday:

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 a holiday in lieu of a customary holiday to which he is entitled, and in that case the proviso specified in sub-paragraph (1) of this paragraph shall not apply.

B. ANNUAL HOLIDAY

8.—(1) Subject to the provisions of paragraph 9, a worker qualified to be allowed an annual holiday *or additional annual holiday* shall be paid by his employer in respect thereof, on the last day pay preceding such holiday, one day's holiday pay (as defined in paragraph 12) in respect of each day thereof.

(2) Where under the provisions of paragraph 4 an annual holiday is allowed in more than one period, the holiday remuneration shall be apportioned accordingly.

9. Where any accrued holiday remuneration has been paid by the employer to the worker in accordance with paragraph 10 or with Order A.(51) as amended, in respect of employment during any of the periods referred to in that paragraph or that Order respectively, the amount of holiday remuneration payable by the employer in respect of any annual holiday *or additional annual holiday* for which the worker has qualified by reason of employment during the said period 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 or of Order A.(51) as amended.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

10. Where a worker ceases to be employed by an employer after the provisions of this Schedule become effective the employer shall, immediately on the termination of the employment, pay to the worker as accrued holiday remuneration:—

(1) in respect of employment in the 12 months up to and including the preceding 30th March, a sum equal to the holiday remuneration for any days of annual holiday *or additional annual holiday* for which he has qualified, except days of annual holiday *or additional annual holiday* which he has been allowed or has become entitled to be allowed before leaving the employment; and

(2) in respect of any employment since the preceding 30th March, a sum equal to the holiday remuneration which would have been payable to him if he could have been allowed an annual holiday in respect of that employment at the time of leaving it:

Provided that—

(*a*) no worker shall be entitled to the payment by his employer of accrued holiday remuneraion if he is dismissed on the grounds of misconduct and is so informed in writing by the employer at the time of dismissal;

(*b*) where a worker is employed under a written contract of service under which not less than one week's notice in writing on either side is required to terminate the employment and the worker without the consent of his employer terminates his employment:—

(i) without having given not less than one week's notice, or

(ii) before one week has expired from the beginning of such notice,

the amount of accrued holiday remuneration payable to the worker shall be the amount payable under the foregoing provisions of this paragraph, less an amount equal to one day's holiday pay multiplied, in the case of (i), by the number of days constituting the worker's normal working week or, in the case of (ii), by the number of days which at the termination of the employment would complete a normal working week commencing at the beginning of the notice.

PART V

GENERAL

11. For the purposes of calculating any period of employment qualifying a worker for an annual holiday *or 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 three days and has performed some work for which statutory minimum remuneration is payable; or

(ii) he has worked for the employer for less than three days, or has performed no work, solely by reason of the proved illness of or accident to the worker provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed four in the period of 12 months immediately preceding the commencement of the holiday season; or

(iii) he has worked for the employer for less than three days, or has performed no work, solely because he has been suspended owing to shortage of work provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed eight in the period of 12 months last mentioned;

and (*b*) as if he were employed on any day of holiday allowed under the provisions of this Schedule, and for the purpose of the provisions of (*a*) of this paragraph, a worker who is absent on such a holiday shall be treated as having worked thereon for the employer on work to which statutory minimum remuneration applies.

12. In this Schedule, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them:—

"DELIVERY WORKER" means a worker who normally is in charge of and wholly or mainly engaged in driving a mechanically propelled or horse drawn vehicle and in work in connection with the vehicle and its load (if any) while on the road and, if so required by the employer, in washing the vehicle when not on the road.

"DRIVER-SALESMAN" means a worker who normally is wholly or mainly engaged in the duties of a delivery worker as defined above and in the sale of goods to and the collection of monies from customers.

"FULL TIME WORKER" means a worker who normally works for the employer for at least 30 hours per week and performs some work to which statutory minimum remuneration applies.

"NORMAL WORKING WEEK" means the number of days on which it has been usual for the worker to work in a week in the employment of the employer in the 12 months immediately preceding the commencement of the holiday season, or, where under paragraph 10 of this Schedule accrued holiday remuneration is payable on termination of the employment, in the 12 months immediately preceding the date of 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.

"ONE DAY'S HOLIDAY PAY" means the appropriate proportion of the remuneration which the worker would be entitled to receive from his employer at the date of the annual holiday *or additional annual holiday* (or where the holiday is allowed in more than one period at the date of each period) or at the termination date, as the case may require, for one week's work if working his normal working week and the number of daily hours normally worked by him (exclusive of overtime) and if paid as a time worker at the appropriate rate of statutory minimum remuneration for work for which statutory minimum remuneration is payable and at the same rate for any work for which such remuneration is not payable, and in this definition "appropriate proportion" means—

Where the worker's normal working week is 6 days...	one-sixth
" " " " " " " 5 "	one-fifth
" " " " " " " 4 "	one-quarter
" " " " " " " 3 " or less	one-third

"STATUTORY MINIMUM REMUNERATION" means statutory minimum remuneration (other than holiday remuneration) which has been fixed by a wages regulation order.

"WEEK" means pay week.

13. The provisions of this Schedule are without prejudice to any agreement for the allowance of any further holidays with pay or for the payment of additional holiday remuneration.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which has effect from the 20th May 1970, 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 Aerated Waters Wages Council (England and Wales) Wages Regulation (Holidays) Order 1954 (Order A. (51)), which Order is revoked.

New provisions are printed in italics.

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