STATUTORY INSTRUMENTS

1969 No. 547

WAGES COUNCILS

The Wages Regulation (Aerated Waters) (Scotland) (Holidays) Order 1969

Made - - - 14*th April* 1969

Coming into Operation 5*th May* 1969

Whereas the Secretary of State has received from the Aerated Waters Wages Council (Scotland) 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) (Scotland) (Holidays) Order 1969.

2.—(1) In this Order the expression "the specified date" means the 5th May 1969, 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 Wages Regulation (Aerated Waters) (Scotland) (Holidays) Order 1968(**c**) shall cease to have effect.

Signed by order of the Secretary of State.

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

14th April 1969.

(**a**) 1959 c. 69.
(**b**) 1889 c.63.
(**c**) S.I. 1968/752 (1968 II, p.2126).

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 Wages Regulation (Aerated Waters) (Scotland) (Holidays) Order, 1968 (hereinafter referred to as "Order A.S. (65)").

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 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 (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 three working days on which work was available to him immediately preceding the customary holiday.

(2) The said customary holidays are:—

1st and 2nd January (or, if either of these days falls on a Sunday, 3rd January shall be substituted for such day);
the local Spring holiday,
the local Summer holiday and
the local Autumn holiday,
each to be allowed on a Monday fixed by the employer and notified to the worker not less than three weeks before the holiday; and
Christmas Day (or, if Christmas Day falls on a Sunday, 26th December shall be substituted).

(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 such 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 on which he would normally work within the period of 28 days next ensuing, provided that where a worker is required to work on the customary holiday fixed in respect of the local Spring, Summer or Autumn holiday, the holiday in lieu of the customary holiday shall be allowed on a Monday.

(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 8.

PART III

ANNUAL HOLIDAY AND LONG SERVICE ANNUAL HOLIDAY

3.—(1) Subject to the provisions of this paragraph and of paragraph 4, in addition to the holidays specified in Part II of this Schedule, an employer shall between the date on which the provisions of this Schedule become effective and 31st October 1969 and in each succeeding year between 1st April and 31st October allow a holiday (hereinafter referred to as an "annual holiday") to every worker in his employment to whom this Schedule applies who has been 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 (calculated in accordance with the provisions of paragraph 12) 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 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 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 in the holiday season ending on 31st October 1969, shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order A.S. (65) between 1st April 1969 and the date on which the provisions of this Schedule become effective.

(3) In this Schedule the expression "holiday season" means in relation to the year 1969 the period commencing on 1st April 1969 and ending on 31st October 1969, and, in each succeeding year, the period commencing on 1st April and ending on 31st October of the same year.

4. 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, and days of annual holiday shall be treated as consecutive, notwithstanding that some other holiday intervenes:

Provided that—

(1) Where the duration of an annual holiday to which a worker is entitled exceeds the period constituting the worker's normal working week the holiday may be allowed in two separate periods of consecutive working days, and in that event, notwithstanding the foregoing provisions of this Schedule, the worker shall be allowed the annual holiday as follows:—

(*a*) as to one period, not being less than the period constituting the worker's normal working week, during the holiday season, and

(*b*) as to the other period either during the holiday season or within the period ending on 31st March immediately following the holiday season.

(2) One day of annual holiday may be allowed on a non-consecutive working day falling within the holiday season (or after the holiday season in the circumstances specified in proviso (1)(*b*) of this paragraph) where the said annual holiday or, as the case may be, such separate period, is allowed immediately after a customary holiday or so that a customary holiday intervenes.

5. *Subject to the provisions of this paragraph, in addition to the holidays specified in paragraphs 2 and 3 an employer shall in the year commencing on 1st April 1969 and commencing on 1st April in each succeeding year allow an additional annual holiday (hereinafter referred to as a "long service annual holiday") amounting to the worker's normal working week to every worker to whom this Schedule applies whose contract of employment shall have existed continuously for five years or more at each 1st April.*

6. *Where a worker becomes entitled to a long service annual holiday in accordance with the provisions of paragraph 5, the holiday shall be allowed in one period of consecutive working days at a time to be fixed by the employer which need not be within the holiday season.*

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 of the commencing date of his long service 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

8.—(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 if the day had not been a day of holiday and he had been employed on work to which statutory minimum remuneration applies for the time usually worked by him on that day of the week:

Provided, however, 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 each of the first two working days following the holiday.

(2) The 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 second working day following the holiday are paid.

(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 a 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 condition specified in sub-paragraph (1) of this paragraph shall not apply.

B—ANNUAL HOLIDAY AND LONG SERVICE ANNUAL HOLIDAY

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

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

10. Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with paragraph 11 of this Schedule or with Order A.S. (65) 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 *long service annual holiday* or 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 or of Order A.S. (65).

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

11. Subject to the provisions of this paragraph, if a worker ceases to be employed before being entitled to be allowed an annual holiday *or long service annual holiday* or before being allowed the whole of any annual holiday to which he is entitled under this Schedule, the employer shall, immediately on the termination of the employment (hereinafter referred to as "the termination date"), pay to the worker as accrued holiday remuneration:—

(1) in respect of any period of employment occuring before 1st April 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 April aforesaid in respect of that period of employment and,

(2) in respect of any period of employment since 31st 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 accordance with this paragraph or in accordance with the provisions of Order A.S. (65) in respect of that period *and*,

(3) *in respect of a long service annual holiday for which the worker may have qualified at 1st April immediately preceding the termination date and which he has not been allowed, an amount equal to one day's holiday pay (as defined in paragraph 14) multiplied by the number of days constituting the worker's normal working week at said 1st April:*

Provided that no worker shall be entitled to the payment by his employer of accrued holiday remuneration if he is dismissed on the grounds of misconduct and is so informed by the employer at the time of dismissal.

PART V

GENERAL

12. For the purposes of calculating any period of employment entitling a worker to an annual holiday or to any accrued holiday remuneration under this Schedule, the worker shall be treated:—

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

(*a*) he has worked for the employer for not less than 24 hours and has performed some work to which statutory minimum remuneration applies; or

(*b*) he has been absent throughout the week by reason of proved illness or accident (provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed eight in any such period as aforesaid); or

(*c*) he has been suspended throughout the week 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 any such period as aforesaid, and the number of consecutive weeks so treated shall not exceed two at any one time); and

(2) 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 sub-paragraph (1) of this paragraph a worker who is absent on such a holiday shall be treated as having worked thereon for the employer for the number of hours ordinarily worked by him on that day of the week on work to which statutory minimum remuneration applies.

13. Where any day of annual holiday *or long service annual 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 1959, the annual holiday shall be in addition to the said day of holiday but the said half-holiday shall be treated as part of the annual holiday.

14. In this Schedule, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"Normal working week" means the number of days on which it has been usual for the worker to work in a week while in the employment of the employer during the 12 months immediately preceding the commencement of the holiday season, or, where under paragraph 11, accrued holiday remuneration is payable on the termination of the employment during the 12 months immediately preceding the termination date *where accrued holiday remuneration is due in respect of annual holiday, and during the 12 months immediately preceding 1st April where accrued holiday remuneration is due in respect of a long service annual holiday:*
Provided that—

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

(2) 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 worker's weekly remuneration, that is to say,

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

and in this definition, "weekly remuneration" means the remuneration which the worker would be entitled to receive from the employer at the date of the holiday or, where accrued holiday remuneration is payable, at the termination date, for one week's work

(*a*) if working his normal working week and the daily number of hours normally worked by him (exclusive of overtime); and

(*b*) if paid at the appropriate rate of statutory minimum remuneration for work to which statutory minimum remuneration applies and at the same rate for any work for the same employer to which such remuneration does not apply.

"Statutory minimum remuneration" means minimum remuneration (other than holiday remuneration) fixed by a wages regulation order made by the Secretary of State to give effect to proposals submitted to her by the Wages Council.
"Week" means "pay week".

15. 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 5th May 1969, sets out the holidays which an employer is required to allow to workers and the remuneration payable for these holidays, in substitution for the holidays and holiday remuneration fixed by the Wages Regulation (Aerated Waters) (Scotland) (Holidays) Order 1968 (Order A.S. (65)), which Order is revoked.

New provisions are printed in italics.