STATUTORY INSTRUMENTS

1962 No. 2204

WAGES COUNCILS

The Wages Regulation (Boot and Shoe Repairing) (Holidays) Order 1962

Made - - - - 2*nd October* 1962
Coming into Operation 26*th October* 1962

Whereas the Minister of Labour (hereafter in this Order referred to as "the Minister") has received from the Boot and Shoe Repairing Wages Council (Great Britain) the wages regulation proposals set out in the Schedule hereto;

Now, therefore, the Minister, by virtue of the powers conferred on him by section 11 of the Wages Councils Act 1959(a), and of all other powers enabling him in that behalf, hereby makes the following Order:—

1. This Order may be cited as the Wages Regulation (Boot and Shoe Repairing) (Holidays) Order 1962.

2.—(1) In this Order the expression "the specified date" means the 26th October 1962, 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 (Boot and Shoe Repairing) (Holidays) Order 1956(c), shall cease to have effect.

Dated 2nd October 1962.

John Hare,
Minister of Labour.

(a) 7 & 8 Eliz. 2. c. 69. (b) 52 & 53 Vict. c. 63. (c) S.I. 1956/2009 (1956 II, p. 2529).

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 (Boot and Shoe Repairing) (Holidays) Order 1956(a) (hereinafter referred to as " Order D. (119) "), as amended by the Second Schedule to the Wages Regulation (Boot and Shoe Repairing) Order 1961(b) (Order D. (129)).

PART I

APPLICATION

1. This Schedule applies to every worker (other than an outworker) 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 (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 working day on which work was available to him immediately preceding the customary holiday.

(2) The said customary holidays are:—

(*a*) in England and Wales

(i) Christmas Day, Boxing Day, Good Friday, Easter Monday, Whit Monday, the first Monday in August and any day proclaimed as a public holiday or additional bank holiday, or

(ii) in the case of each of the first six named holidays, such other day (not being a weekly short day) as may be substituted therefor by the employer by a notice posted in the factory throughout the three weeks immediately preceding the holiday for which it is substituted;

(*b*) in Scotland

(i) New Year's Day, Good Friday, the local Spring holiday, the day observed as Victoria Day or Queen's birthday, the local Autumn holiday, Christmas Day and any day proclaimed as a public holiday or additional bank holiday, or

(ii) in the case of each of the named holidays, such other day (not being a weekly short day) as may be substituted therefor by the employer by a notice posted in the factory throughout the three weeks immediately preceding the holiday for which it is substituted:

Provided that notification of days of holiday made by the employer for the purpose of Section 94 of the Factories Act 1961(c) shall be treated for the purposes of this sub-paragraph as effective notice of substitution.

(3) Where in England and Wales, Christmas Day or Boxing Day, or in Scotland, New Year's Day or Christmas Day falls on a Saturday, the employer shall allow to a worker who normally works for the employer on 5 days a week but does not normally work for him on a Saturday, instead of the customary holiday, a holiday on a day on which the worker normally works for the employer during the week immediately following the customary holiday:

Provided that a worker shall not be entitled to a holiday in pursuance of this sub-paragraph if he is not qualified under sub-paragraph (1) of this paragraph to be allowed the customary holiday and would not be so qualified if he normally worked for the employer on a Saturday.

(a) S.I. 1956/2009 (1956 II, p. 2529). (b) S.I. 1961/1309 (1961 II, p. 2481).
(c) 9 & 10 Eliz. 2. c. 34.

(4) 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 week-day being a day upon which he would normally work, within the period of 4 weeks next ensuing.

(5) 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.

PART III

ANNUAL HOLIDAY

3.—(1) In addition to the holidays specified in Part II of this Schedule and subject to the provisions of sub-paragraph (2) of this paragraph and of paragraph 4, an employer shall between the date on which the provisions of this Schedule become effective and 30th November 1962, and in each succeeding year between 1st April and 30th November, 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 twelve months immediately preceding the commencement of the holiday season for any one of the periods of employment (calculated in accordance with the provisions of paragraph 11) 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			
	Where the worker's normal working week is:—			
	Six days	Five days	Four days	Three days or less
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 „	2 „	1 day	1 „
„ „ 4 „	1 day	1 day	1 „	—

(2) Notwithstanding the provisions of the last foregoing sub-paragraph, 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.

(3) The duration of the worker's annual holiday in the holiday season ending on 30th November 1962, shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order D. (119) between 1st April 1962, and the date on which the provisions of this Schedule become effective.

(4) In this Schedule the expression "holiday season" means, in relation to an annual holiday during the year 1962, the period commencing on 1st April and ending on 30th November 1962, and, in relation to each subsequent year, the period commencing on 1st April and ending on 30th November in that year.

4. An annual holiday under this Schedule 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 holiday shall be treated as consecutive notwithstanding that a Sunday or some other holiday intervenes:

Provided that where the number of days of annual holiday which an employer is required to allow to a worker is more than the number of days constituting the worker's normal working week, the said holiday may, by agreement between the employer and the worker or his representative, be allowed in two or three separate periods of such consecutive working days, provided that one of the periods is of not less duration than the number of days constituting the worker's normal working week and that the remaining days of holiday are allowed on whole days upon which the worker is normally employed by the employer.

5. Subject to the provisions of paragraph 4, any 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.

6. An employer shall give a worker notice of the commencing date and duration of his annual holiday. Such notice shall be given at least 28 days before the first day of the holiday or, where, under the provisions of paragraph 4, an annual holiday is allowed in more than one period, before each separate period, and may be given individually to a worker or by the posting of a notice in the place where the worker is employed.

PART IV

HOLIDAY REMUNERATION

CUSTOMARY HOLIDAYS

7.—(1) 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) works throughout the first day on which work is available to him immediately following the holiday.

(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 first working day following the said holiday.

(3) Holiday remuneration in respect of any holiday in lieu of a customary holiday shall be paid on the day on which wages are paid for the first 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 condition specified in sub-paragraph (1) of this paragraph shall not apply.

ANNUAL HOLIDAY

8.—(1) Subject to the provisions of paragraph 9, a worker qualified to be allowed an 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 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 of this Schedule or under the provisions of Order D. (119)) in respect of employment during any of the periods referred to in paragraph 10, 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 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.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

10.—(1) Where a worker ceases to be employed by an employer after the provisions of this Schedule become effective, the employer shall, subject to the provisions of sub-paragraph (2) of this paragraph, immediately on the termination of the employment (hereinafter referred to as "the termination date") pay to the worker accrued holiday remuneration, that is to say:—

(i) in respect of any period of employment occurring 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 8, 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

(ii) 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 12) 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 been allowed 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 D. (119) in respect of that period:

Provided that—

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

(*b*) where a worker is employed under a contract of service under which not less than one week's notice on either side is required to terminate the employment and the worker, without the consent of his employer, terminates his employment without having given not less than one week's notice or 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 by the number of days constituting the worker's normal working week.

(2) Accrued holiday remuneration is not payable in respect of any period of employment for which the worker has been allowed or become entitled to be allowed an annual holiday under this Schedule.

PART V

GENERAL

11. For the purposes of calculating any period of employment qualifying a worker for an 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 24 hours and has performed some work for which statutory minimum remuneration is payable; or

(ii) he has worked for the employer for less than 24 hours, 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 any such period as aforesaid; or

(iii) he has worked for the employer for less than 24 hours, or has performed no work, solely by reason of a stoppage of work due to a trade dispute (except a stoppage due to a strike which is unauthorised at its inception by the worker's Trade Union); 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 for the number of hours ordinarily worked by him on that day of the week on work to which statutory minimum remuneration applies.

12. 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 in the employment of the employer during the twelve months immediately preceding the commencement of the holiday season, or where, under paragraph 10,

accrued holiday remuneration is payable on the termination of the employment, in the twelve months immediately preceding the termination date:

Provided that:—

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

(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, where the holiday is taken in more than one period, at the date of the first period) or at the termination date, as the case may be, 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 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, 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 " — one-third
" " " " " " " 2 " — one-half
" " " " " " " 1 day — the whole.

"STATUTORY MINIMUM REMUNERATION" means minimum remuneration (other than holiday remuneration) fixed by a wages regulation order made by the Minister to give effect to proposals submitted to him by the Boot and Shoe Repairing Wages Council (Great Britain).

"WEEK" means pay week.

"WEEKLY SHORT DAY" means:—

(a) Saturday or (except where in the case of a woman or young person such substitution is unlawful) any week-day, other than a customary holiday, substituted therefor by agreement in writing between the employer and the worker, or,

(b) Where a customary holiday falls on the weekly short day, a working day in the week not being a customary holiday, fixed by the employer and notified to the worker not later than the Saturday preceding the week during which it is to have effect; or, failing such notification the last working day in the week which is not a customary holiday:

Provided that where Christmas Day or Boxing Day in England and Wales or Christmas Day or New Year's Day in Scotland falls on the weekly short day the employer may fix as the weekly short day for that week a working day in the following week not being either a customary holiday or the weekly short day for that following 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, but is intended to indicate its general purport.)

This Order, which has effect from the 26th October 1962, 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 Wages Regulation (Boot and Shoe Repairing) (Holidays) Order 1956 (Order D. (119)), as amended by the Second Schedule to the Wages Regulation (Boot and Shoe Repairing) Order 1961 (Order D. (129)). Order D. (119) is revoked.

New provisions are printed in italics.