STATUTORY INSTRUMENTS

1971 No. 1605

WAGES COUNCILS

The Wages Regulation (Boot and Shoe Repairing) (Holidays) Order 1971

Made - - - *29th September* 1971

Coming into Operation *1st November* 1971

Whereas the Secretary of State 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 Secretary of State in exercise of his powers under 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 1971.

2.—(1) In this Order the expression "the specified date" means the 1st 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.

(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 1970(c) shall cease to have effect.

Signed by order of the Secretary of State.
29th September 1971.

J. R. Lloyd Davies,
Assistant Secretary,
Department of Employment.

(a) 1959 c. 69. (b) 1889 c. 63.
(c) S.I. 1970/723 (1970 II, p. 2319).

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 (Boot and Shoe Repairing) (Holidays) Order 1970 (Order D. (153)).

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) Subject to the following provisions of this paragraph, 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 (or where another day is substituted therefor by national proclamation, that day), August Bank Holiday 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 day on which a rest period occurs) 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 day on which a rest period occurs) 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 purposes of Section 94 of the Factories Act 1961(a), shall be treated for the purposes of this sub-paragraph as effective notice of substitution.

(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

(a) 1961 c. 34.

entitled to be allowed a day's holiday (hereinafter referred to as a "holiday in lieu of a customary holiday") on a week-day other than a day on which a rest period occurs, 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 9.

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 this Schedule becomes effective and 30th November 1971, 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 12 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 14) 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	15 days	13 days	11 days	9 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 1971, shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order D. (153) between 1st April 1971, 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 1971, the period commencing on 1st April and ending on 30th November 1971, and, in relation to each subsequent year, the period commencing on 1st April and ending on 30th November in that year.

4.—(1) Subject to the provisions of this paragraph, 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.

(2) (*a*) Where the number of days of annual holiday for which a worker has qualified exceeds the number of days constituting the worker's normal working week but does not exceed twice that number, 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.

(*b*) Where the number of days of annual holiday for which a worker has qualified exceeds twice the number of days constituting his normal working week the holiday may be allowed as follows:—

(i) as to the period comprising twice the number of days constituting the worker's normal working week, in accordance with sub-paragraph (*a*) of this paragraph; and

(ii) as to any additional days, on working days which need not be consecutive, to be fixed by agreement between the employer and the worker or his representative, during the period 1st December and 31st March immediately following the holiday season.

5. Subject to the provisions of paragraph 4, any day of annual holiday under this Schedule:—

(1) 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;

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

ADDITIONAL ANNUAL HOLIDAY

6.—(1) Subject to the provisions of this paragraph, in addition to the holidays specified in paragraphs 2 and 3 an employer shall in each year commencing on 1st April allow a holiday (hereinafter referred to as an "additional annual holiday") to every worker in his employment to whom this Schedule applies who has been employed by him at 1st April aforesaid for a continuous period of 3 years or more (calculated in accordance with paragraph 14) and the duration of the additional annual holiday shall be—

where the worker's normal working week is 6 days	*3 days*
" " " " " " " 5 "	*2 days*
" " " " " " " 4 "	*1 day*

(2) Notwithstanding the provisions of sub-paragraph (1) of paragraph 3 and of the last foregoing sub-paragraph the number of days of annual holiday and additional annual holiday which an employer is required to allow to any worker in any period of 12 months commencing on 1st April shall not exceed in the aggregate three times the number of days constituting the worker's normal working week.

7. Where a worker becomes entitled to any days of additional annual holiday in accordance with the provisions of paragraph 6 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 and 31st March next following 1st April upon which the worker becomes entitled as aforesaid; or

where the employer so decides, on working days which need not be consecutive, during the holiday season.

8. An employer shall give to a worker notice of the commencing date or dates and duration of his annual holiday and, where the worker has qualified for an additional annual holiday in accordance with the provisions of paragraph 6, of the commencing date or dates of his additional 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 or paragraph 7, a holiday is allowed in more than one period, before each separate period.

PART IV

HOLIDAY REMUNERATION

CUSTOMARY HOLIDAYS

9.—(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 as holiday remuneration whichever of the following amounts is the greater—

(*a*) one-fifth of the appropriate statutory minimum remuneration to which he would have been entitled as a time worker for a week's work if he had worked the number of hours normally worked by him (exclusive of overtime) during the week; or

(*b*) the appropriate statutory minimum remuneration (exclusive of overtime) 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

10.—(1) Subject to the provisions of paragraph 12, 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 15) 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.

ADDITIONAL ANNUAL HOLIDAY

11.—(1) A worker qualified to be allowed an additional annual holiday under this Schedule shall be paid by his employer, on the last pay day preceding such additional annual holiday, one day's holiday pay (as defined in paragraph 15) in respect of each day thereof.

(2) Where an employer allows the days of additional annual holiday otherwise than on consecutive days the remuneration shall be apportioned accordingly.

12. Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with paragraph 13 of this Schedule or under the provisions of Order D. (153)) in respect of employment during any of the periods referred to in paragraph 13, 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 or of Order D. (153).

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

13.—(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:—

(*a*) 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 10, 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;

(*b*) *in respect of employment occurring before 1st April immediately preceding the termination date an amount equal to the holiday remuneration for any days of additional annual holiday for which he has qualified; and*

(*c*) 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 15) 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. (153) 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

14. 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—

(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 for which statutory minimum remuneration is payable; or

(*b*) 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

(*c*) 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

(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 (*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.

15. 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 12 months immediately preceding the commencement of the holiday season, or where, under paragraph 13, accrued holiday remuneration is payable on the termination of the employment, in the 12 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 he were paid:—

(1) where the worker is employed as a time worker, the amount which the worker would be entitled to receive from the employer under the arrangement current immediately prior to the holiday;

(2) where the worker is employed as a piece worker, a time rate equal to the hourly general minimum time rate applicable to the worker (or which would be applicable if he were a time worker) increased by ten per cent., for work to which statutory minimum remuneration applies and at the same rate (increased as aforesaid) 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.

"REST PERIOD" means—

(1) a day (other than a Sunday or customary holiday) in each week of employment (or where one or more customary holidays fall in any such week either in that week or at the employer's option in the next succeeding week), appointed by the employer by giving at least three weeks' notice to the worker as the day upon which the worker will not normally be required to work, or

(2) each of the periods during which a worker will not normally be required to work on two days (other than Sundays or customary holidays) in each week of employment (or where one or more customary holidays fall in any such week either in that week or at the employer's option in the next succeeding week) similarly appointed by the employer as days upon which the worker will not normally be required to work for more than 5 hours, or

(3) in default of any such appointment by the employer as is mentioned in the preceding sub-paragraphs (1) and (2) hereof, Saturday or if Saturday is a customary holiday the last working day preceding it.

"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 him by the Boot and Shoe Repairing Wages Council (Great Britain).

"WEEK" means pay week.

16. 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 1st 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 Wages Regulation (Boot and Shoe Repairing) (Holidays) Order 1970 (Order D. (153)), which Order is revoked.

New provisions are printed in italics.