1963 No. 382

WAGES COUNCILS

The Wages Regulation (Brush and Broom) (Holidays) Order 1963

Made - - - - *27th February* 1963
Coming into Operation *22nd March* 1963

Whereas the Minister of Labour (hereafter in this Order referred to as "the Minister") has received from the Brush and Broom 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 (Brush and Broom) (Holidays) Order 1963.

2.—(1) In this Order the expression "the specified date" means the 22nd March 1963, 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 (Brush and Broom) (Holidays) Order 1962(c), shall cease to have effect.

Dated 27th February 1963.

John Hare,
Minister of Labour.

(a) 7 & 8 Eliz. 2. c. 69. (b) 52 & 53 Vict. c. 63.
(c) S.I. 1962/490 (1962 I, p. 495).

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 (Brush and Broom) (Holidays) Order 1962(a) (hereinafter referred to as "Order M. (94)").

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 was in his employment for a period of not less than eight weeks immediately preceding the customary holiday and 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 the worker) throughout the last working day on which work was available to him immediately preceding the customary holiday.

(2) The said customary holidays are:—

(*a*) (i) In England and Wales—

Christmas Day (or, if Christmas Day falls on a Sunday, such week day 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 and August Bank Holiday;

(ii) In Scotland—

New Year's Day (or, if New Year's Day falls on a Sunday, the following Monday);

the local Spring holiday;

the local Autumn holiday; and

three other days (being days on which the worker normally works) in the course of a calendar year, to be fixed by agreement between the employer and the worker;

or (*b*) in the case of each of the said days (other than a day in Scotland fixed by agreement between the employer and the worker), a day substituted therefor by agreement between the employer and the worker, being a day recognised by local custom as a day of holiday in substitution for the said day.

(3) Where in England and Wales, Christmas Day or Boxing Day, or in Scotland New Year's Day (or any day substituted for any one of these days under the provisions of (*b*) of sub-paragraph (2) of this paragraph), falls on a Saturday, the employer shall allow:—

(*a*) to a worker who normally works for the employer on five 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

(a) S.I. 1962/490 (1962 I, p. 495).

works for the employer during the eight weeks immediately following the customary holiday;

(*b*) to a worker who normally works for the employer on six days a week (including Saturday) but normally works on a Saturday for not more than five hours, in addition to the customary holiday, a holiday on a Saturday during the eight weeks immediately following the customary holiday:

Provided that a worker shall not be entitled to a holiday in pursuance of this sub-paragraph:—

(i) 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; or

(ii) if, in the case of a worker to whom (*a*) of this sub-paragraph applies, he has been allowed a day of holiday (not being a customary holiday or a day of annual holiday) on a day on which he would normally work for the employer in the four weeks immediately preceding the customary holiday and has been paid for that holiday not less than the amount to which he would have been entitled had the day been a customary holiday allowed to him under sub-paragraph (1) of this paragraph; or

(iii) if, in the case of a worker to whom (*b*) of this sub-paragraph applies, he has been allowed not less than 4 hours off from work during his normal working hours on a day on which the worker would normally have worked for the employer (not being a customary holiday or a day of annual holiday) during the ten days immediately preceding the customary holiday and has been paid in respect of the hours off so allowed to him not less than the statutory minimum remuneration to which he would have been entitled as a time worker if he had worked throughout those hours on his usual work.

(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 holiday on which he so works, the employer shall allow to the worker a day's holiday (hereinafter referred to as a "holiday in lieu of a customary holiday") on a week day on which he would normally work for the employer within the period of two months next ensuing.

(5) A worker who is so 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 6.

PART III

ANNUAL HOLIDAY

3.—(1) Subject to the provisions of paragraph 4, in addition to the holidays specified in Part II of this Schedule an employer shall, between 1st June and 30th September 1963, and in each succeeding year between 1st June and the 30th September, 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 ended on the 5th April immediately preceding the commencement of the holiday season for any of the periods of employment (calculated in accordance with the provisions of paragraph 10) set out in the table below, and the duration of the

annual holiday shall, in the case of each such worker, be related to his period of employment during that 12 months as follows:—

Period of employment	Duration of annual holiday for workers with a normal working week of:—			
	6 days	5 days	4 days	3 days
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 „

(2) In this Schedule the expression "holiday season" means in relation to the year 1963 the period commencing on 1st June 1963 and ending on 30th September 1963, and, in each succeeding year, the period commencing on 1st June and ending on 30th September of the same 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) 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, by agreement in writing made between the employer and the worker, be allowed in two periods of consecutive working days; so however that when a holiday is so allowed, one of the periods shall consist of a number of such days not less than the number of days constituting the worker's normal working week.

(3) 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 or a day upon which he does not normally work for the employer intervenes.

(4) Subject to the provisions of sub-paragraph (5) of this paragraph, 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 shall be allowed on any working day in the holiday season, or with the consent of the worker on any working day prior to the commencement of the next holiday season.

(5) Any day of annual holiday under this Schedule may be allowed on a day on which the worker is entitled to a day of holiday or to a half-holiday under any enactment other than the Wages Councils Act 1959, except that a day of annual holiday allowed under sub-paragraph (4) of this paragraph shall not be allowed on the worker's weekly short day.

5. An employer shall give to a worker notice of the commencing date or dates and duration of the period or periods of his annual holiday. Such notice shall be given at least 28 days before the first day of the annual 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 the worker or by the posting of a notice in the place where the worker is employed.

PART IV

HOLIDAY REMUNERATION

A.—CUSTOMARY HOLIDAYS AND HOLIDAYS IN LIEU OF CUSTOMARY HOLIDAYS

6.—(1) Subject to the provisions of this paragraph, for each day of holiday which a worker is allowed under Part II of this Schedule he shall be paid by the employer as holiday remuneration whichever of the following sums is the greater, that is to say either:—

(*a*) (i) In the case of a worker whose normal working week exceeds five days, two-elevenths
(ii) In the case of a worker whose normal working week is five days, one-fifth
(iii) In the case of a worker whose normal working week is four days, one-quarter
(iv) In the case of a worker whose normal working week is three days, one-third

of the average weekly earnings of the worker during the 12 months ended on the 5th April immediately preceding the holiday such average weekly earnings to be determined by dividing, by the number of weeks of employment with the employer during the said period, the total remuneration (as defined in paragraph 11) paid to him by the employer during that period;

or (*b*) a sum 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 entitling him to statutory minimum remuneration for the time normally 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 proved illness of the worker) works throughout his normal working hours on the first working day following the holiday.

(2) Holiday remuneration in respect of any holiday allowed under Part II of this Schedule shall be paid to the worker not later than on the pay day on which the wages are paid for the first working day following the holiday: Provided that where a worker ceases to be employed before being allowed a holiday in lieu of a customary holiday or a holiday under sub-paragraph (3) of paragraph 2, he shall be paid the holiday remuneration for that day immediately upon the termination of his employment and in such a case the condition contained in the proviso to sub-paragraph (1) of this paragraph shall not apply.

B.—ANNUAL HOLIDAY

7.—(1) Subject to the provisions of paragraph 8, a worker qualified to be allowed an annual holiday under this Schedule shall be paid as holiday remuneration by his employer in respect thereof, not later than the last pay day preceding such annual holiday, whichever of the following sums is the greater, that is to say either:—

(*a*) a sum equal to two fifty-seconds of the total remuneration (as defined in paragraph 11) paid by the employer to the worker during the 12 months ended on the 5th April immediately preceding the holiday; or,

(*b*) one day's holiday pay 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.

8. Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with the provisions of paragraph 9 of this Schedule or under Order M. (94)) 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 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

9.—(1) Subject to the provisions of this paragraph 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:—

(*a*) in respect of employment in the 12 months up to and including the immediately preceding 5th day of April a sum equal to the holiday remuneration for any days of holiday for which he has qualified;

and (*b*) in respect of any employment since the said 5th April for a period of at least 8 weeks duration (calculated in accordance with paragraph 10) whichever of the following sums is the greater, that is to say either:—

(i) a sum equal to two fifty-seconds of the total remuneration (as defined in paragraph 11) paid by the employer to the worker since that date; or,

(ii) a sum equal to the holiday remuneration for any days of annual holiday 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 and if paid at the rate of one day's holiday pay in respect of each day thereof.

(2) Accrued holiday remuneration is not payable in respect of any days of annual holiday which the worker has been allowed or become entitled to be allowed under this Schedule or under Order M. (94).

(3) Subject to the provisions of sub-paragraph (4) hereof, where a worker has been allowed in a holiday season part only of the annual holiday for which he has qualified under this Schedule or under Order M. (94) and his employment is terminated before he becomes entitled to the rest of that holiday the accrued holiday remuneration payable shall be the appropriate amount under the foregoing provisions less the amount received by the worker in respect of that part of the holiday which has been allowed.

(4) Any accrued holiday remuneration payable under the provisions of this paragraph shall be reduced by the amount of any accrued holiday remuneration already paid by the employer to the worker in pursuance of this Schedule or Order M. (94) in respect of the same period of employment or part thereof.

PART V
GENERAL

10. 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 on not less than three days and has performed some work for which statutory minimum remuneration is payable;

(*b*) he has been absent throughout the week or he has worked for the employer on less than 3 days, by reason, in either case, 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 reasons shall not exceed four in the aggregate in the period of 12 months ended on the 5th April immediately preceding the commencement of the holiday season; and

(2) as if he were employed on any day of holiday allowed under the provisions of this Schedule or of Order M. (94) 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 on work for which statutory minimum remuneration is payable.

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

"APPROPRIATE RATE OF STATUTORY MINIMUM REMUNERATION" means, where the worker is usually employed as:—

(1) a time worker ...	the general minimum time rate applicable to the worker.
(2) a piece worker and is a female worker under 21 years of age	the general minimum time rate which would apply if the worker were employed as a time worker.
(3) a piece worker and is not a worker specified in (2) of this definition ...	a time rate equal to the basis rate.

For the purpose of this definition—

(*a*) the expression "basis rate" means the piece work basis time rate applicable to the worker or which is applicable when no general minimum piece rate applies or where no such piece work basis time rate is applicable the general minimum time rate which would apply if the worker were a time worker;

(*b*) where a worker is employed on work to which more than one minimum rate applies, the rate shall be ascertained by reference to the work on which he has been mainly employed in the 12 months prior to the holiday in the case of a customary holiday or holiday in lieu of a customary holiday, the commencement of the holiday season in the case of an annual holiday, or the date of the termination of the employment where accrued holiday remuneration is payable;

(*c*) where a worker is usually employed partly on time work and partly on piece work, he shall be treated as having been employed on piece work for the whole of his time;

(*d*) where a female worker aged under 21 years is employed on pan work the general minimum time rate applicable shall be the rate for "all other workers" which would apply to the worker if no other general minimum time rate applied.

"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 ended on 5th April immediately preceding the commencement of the holiday season or, where under paragraph 9 accrued holiday remuneration is payable on the termination of the employment, in the 12 months immediately preceding the date of the termination of the employment:

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 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 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 the same employer for which such remuneration is not payable, and in this definition "appropriate proportion" means—

where the worker's normal working week is six days—two-elevenths

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.

"OUTWORKER" means a worker who works in his own home or in any other place not under the control or management of the employer.

"STATUTORY MINIMUM REMUNERATION" means statutory 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 Brush and Broom Wages Council (Great Britain).

"TOTAL REMUNERATION" means any payments paid or payable to the worker under his contract of employment, for time (other than hours of overtime) worked or piece work done by him (other than during hours of overtime), holiday remuneration, any productivity or long service bonus payable to the worker on a weekly, fortnightly or monthly basis and merit payments so payable but does not include any other payments.

"WEEK" means "pay week".

12. 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 22nd March 1963, 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 set out in the Wages Regulation (Brush and Broom) (Holidays) Order 1962 (Order M. (94)), which is revoked.

New provisions are printed in italics.