STATUTORY INSTRUMENTS

# 1963 No. 401

# WAGES COUNCILS

## The Wages Regulation (Flax and Hemp) (Holidays) Order 1963

*Made* - - - - 28*th February* 1963
*Coming into Operation* 15*th March* 1963

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

**2.**—(1) In this Order the expression "the specified date" means the 15th 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), applies 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 (Flax and Hemp) (Holidays) Order 1958(c), shall cease to have effect.

Dated 28th February 1963.

*John Hare,*
Minister of Labour.

### 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 (Flax and Hemp) (Holidays) Order 1958(c) (hereinafter referred to as "Order F.H. (89)").

(a) 7 & 8 Eliz. 2. c. 69. (b) 52 & 53 Vict. c. 63. (c) S.I. 1958/1660 (1958 II, p. 2435).

## 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 to whom this Schedule applies a holiday (hereinafter referred to as a "customary holiday") in each year on the days specified in the next following sub-paragraph, provided that the worker has been in his employment for a period of not less than four weeks immediately preceding the customary 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 the worker) has worked for the employer throughout the last working day on which work was available to him prior to 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:

Provided that in the case of workers who normally work on each week-day except Saturday if Christmas Day falls on a Saturday the holiday shall be the next following Tuesday;

(ii) In Scotland—

New Year's Day and the following day:

Provided that if New Year's Day falls on a Sunday the holidays shall be the following Monday and Tuesday; if New Year's Day falls on a Saturday then in the case of workers who normally work on each week-day except Saturday the holidays shall be the following Monday and Tuesday and in the case of all other workers, New Year's Day and the following Monday;

the local Spring holiday;

the local Autumn holiday;

and two other days (being days on which the worker normally works for the employer) in the course of a calendar year to be fixed by the employer in consultation with the worker or his representative and notified to the worker not less than three weeks before the holiday;

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

(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 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 four weeks immediately following the customary holiday.

(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 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 *6th April 1963 and 30th September 1963 and in each succeeding year between 6th April and 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 immediately preceding the commencement of the holiday season for any of the periods of employment (calculated in accordance with the provisions of paragraph 10) specified 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:—

| Workers with a normal working week of six days | | Workers with a normal working week of five days or less | |
|---|---|---|---|
| Period of employment | Duration of annual holiday | Period of employment | Duration of annual holiday |
| At least 48 weeks ... ... | 12 days | At least 48 weeks ... ... | 10 days |
| „ „ 44 „ ... ... | 11 „ | „ „ 43 „ ... ... | 9 „ |
| „ „ 40 „ ... ... | 10 „ | „ „ 38 „ ... ... | 8 „ |
| „ „ 36 „ ... ... | 9 „ | „ „ 33 „ ... ... | 7 „ |
| „ „ 32 „ ... ... | 8 „ | „ „ 28 „ ... ... | 6 „ |
| „ „ 28 „ ... ... | 7 „ | „ „ 24 „ ... ... | 5 „ |
| „ „ 24 „ ... ... | 6 „ | „ „ 19 „ ... ... | 4 „ |
| „ „ 20 „ ... ... | 5 „ | „ „ 14 „ ... ... | 3 „ |
| „ „ 16 „ ... ... | 4 „ | „ „ 9 „ ... ... | 2 „ |
| „ „ 12 „ ... ... | 3 „ | „ „ 4 „ ... ... | 1 day |
| „ „ 8 „ ... ... | 2 „ | | |
| „ „ 4 „ ... ... | 1 day | | |

(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*) *In this Schedule the expression "holiday season" means in relation to the year 1963 the period commencing on 6th April 1963 and ending on 30th September 1963, and, in each succeeding year, the period commencing on 6th April 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 between the employer and the worker or his representative, 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) 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.

(5) Subject to the provisions of sub-paragraph (1) of this paragraph, 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.

5. An employer shall give to the 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.

## 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 to which a worker is entitled under Part II of this Schedule he shall be paid by the employer holiday remuneration as follows:—

(*a*) in the case of a piece worker, an amount equal to the *worker's average hourly earnings for the hours worked by him for the employer (exclusive of overtime) in the week immediately preceding that in which the holiday occurs multiplied by the number of hours normally worked by him (exclusive of overtime) on that day of the week*;

(*b*) in the case of a time worker, an amount equal to the sum which would be payable to him by the employer if that day were not a holiday and he worked thereon the number of hours normally worked by him (exclusive of overtime) on that day of the week and if he were paid at the *hourly rate* payable to him under his contract of employment immediately before the holiday.

(2) Payment of the said holiday remuneration is subject to the condition that the worker presents himself for employment at the usual starting hour on the first working day following the holiday and works throughout that day or, if he fails to do so, failure is by reason of the proved illness of, or accident to, the worker or with the consent of the employer.

(3) 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 week including the first working day following the customary holiday are paid.

(4) 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 week including the first 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 sub-paragraph (2) of this paragraph shall not apply.

## B—ANNUAL HOLIDAY

7.—(1) Subject to the provisions of this paragraph and 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, on the last pay day preceding such annual holiday, *an amount equal to four per cent. of the total remuneration (exclusive of annual holiday remuneration and overtime) paid by the employer to the worker during the 12 months immediately preceding the commencement of the holiday season.*

(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 paragraph 9 of this Schedule or with Order F.H. (89)) in respect of employment during any of the periods referred to in that paragraph or that Order, 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. 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 (*hereinafter called "the termination date"*), pay to the worker as accrued holiday remuneration:—

(1) in respect of employment in the 12 months up to *and including 5th April immediately preceding the termination date, a sum equal to the holiday remuneration for any days of annual holiday for which he has qualified except days of 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 *5th April immediately preceding the termination date, an amount equal to four per cent. of the total remuneration (exclusive of annual holiday remuneration and overtime) paid by the employer to the worker since that date.*

## PART V

## GENERAL

10. For the purpose of calculating any period of employment qualifying a worker for an annual holiday 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*) in the case of a worker other than a part-time worker, he has worked for the employer for not less than 20 hours and has performed some work for which statutory minimum remuneration is payable;

(*b*) in the case of a part-time worker, he has worked for the employer and has performed some work for which statutory minimum remuneration is payable;

(*c*) (i) in the case of a worker other than a part-time worker, he has worked for the employer for less than 20 hours by reason of the proved illness of, or accident to, the worker or, in the case of any worker, for a like reason he has been absent throughout the week (provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed four in the aggregate in any such period); or

(ii) in the case of any worker, 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 four in the aggregate in any such period);

(2) as if he were employed on any day of holiday allowed under the provisions of this Schedule, or of Order F.H. (89), and for the purposes of the provisions of sub-paragraph (1) of this paragraph, a worker who is absent on any such holiday shall be treated as having worked thereon for the employer on work for which statutory minimum remuneration is payable *for the number of hours normally worked by him on that day of the week.*

## DEFINITIONS

11. 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 in the 12 months 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 termination date:

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.

"PART-TIME WORKER" means a worker who normally works for the employer for less than 20 hours a week by reason only of the fact that he does not hold himself out as normally available for work for more than the number of hours he normally works in the week.

"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 Flax and Hemp Wages Council (Great Britain).

"WEEK" in paragraphs 3, 6 and 10 and in this paragraph 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 15th 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 (Flax and Hemp) (Holidays) Order 1958 (Order F.H. (89)), which is revoked.

New provisions are printed in italics.