STATUTORY INSTRUMENTS

1963 No. 604

WAGES COUNCILS

The Wages Regulation (Milk Distributive) (England and Wales) Order 1963

Made - - - - 25*th March* 1963
Coming into Operation 14*th April* 1963

Whereas the Minister of Labour (hereafter in this Order referred to as "the Minister") has received from the Milk Distributive Wages Council (England and Wales) 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 (Milk Distributive) (England and Wales) Order 1963.

2.—(1) In this Order the expression "the specified date" means the 14th April 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 (Milk Distributive) (England and Wales) Order 1962(c), shall cease to have effect.

Signed by order of the Minister of Labour.

W. S. I. Whitelaw,
Parliamentary Secretary.

25th March 1963.

ARRANGEMENT OF SCHEDULE

PART I

STATUTORY MINIMUM REMUNERATION

	Paragraphs
General	1-2
General minimum time rates	3-4
Workers in two or more areas	5

(a) 7 & 8 Eliz. 2. c. 69. (b) 52 & 53 Vict. c. 63. (c) S.I. 1962/2465 (1962 III, p. 3323).

	Paragraphs
Overtime	6
Work on a customary holiday	7-8
Overtime being night work	9
Waiting time	10
Night work	11
Payment in respect of customary holidays to workers to whom the provisions of paragraph 13 do not apply	12

PART II

HOLIDAYS AND HOLIDAY REMUNERATION

Customary holidays	13
Duration of annual holiday	14-16
Remuneration	17-18
Accrued holiday remuneration	19
Calculation of employment	20
Other holiday agreements	21

PART III

GENERAL

Definitions	22
Workers to whom the Schedule applies	23

SCHEDULE

The following minimum remuneration and provisions as to holidays and holiday remuneration shall be substituted for the statutory minimum remuneration and the provisions as to holidays and holiday remuneration fixed by the Wages Regulation (Milk Distributive) (England and Wales) Order 1962(a) (Order M.D. (99)).

PART I

STATUTORY MINIMUM REMUNERATION

GENERAL

1.—(1) The minimum remuneration payable in any week to a worker to whom this Schedule applies is the sum of the amounts calculated in accordance with the provisions of (*a*) (i) or (*a*) (ii) and (*b*) and (*c*) below:—

(*a*) For all work except overtime,

(i) in the case of a time worker, the amount yielded by the hourly general minimum time rate applicable to the worker under the provisions of this Schedule ; or,

(ii) in the case of a worker employed on piece work, the amount yielded by piece rates, each of which would yield, in the circumstances of the case, to an ordinary worker at least the same amount of money as the hourly general minimum time rate which would be applicable if the worker were a time worker;

(*b*) For all overtime including work on a customary holiday and any waiting time, the amount payable under paragraphs 6, 7, 8, 9 and 10; and

(*c*) Any further amount payable under paragraphs 11 and 12.

(2) In this Schedule the expression "hourly general minimum time rate" means the general minimum time rate applicable to the worker under the provisions of paragraphs 3, 4 and 5 divided by the number of hours in the week as defined in the next following paragraph.

(a) S.I. 1962/2465 (1962 III, p. 3323).

2. In paragraphs 3, 4 and 5, the expression "week" means:—

(*a*) in the case of a worker who is employed by the week or longer period and whose customary working week consists of a number of hours less than 43 but not less than 38, that number of hours;

(*b*) in any other case, 43 hours.

GENERAL MINIMUM TIME RATES

MALE WORKERS

3. The general minimum time rates applicable to male workers employed in Area A, Area B or Area C are respectively as follows:—

	Area A	Area B	Area C
	Per week	Per week	Per week
	s. d.	s. d.	s. d.
(*a*) FOREMEN	*203 0*	*208 6*	*215 0*
(*b*) STERILIZERS (other than assistant sterilizers), being workers aged 21 years or over	*189 0*	*192 0*	*196 0*
(*c*) CLERKS, being workers aged:—			
21 years or over	*189 0*	*192 0*	*196 0*
20 and under 21 years	*165 6*	*168 0*	*171 6*
19 „ „ 20 „	*151 0*	*153 6*	*157 0*
18 „ „ 19 „	*137 0*	*139 0*	*142 0*
17 „ „ 18 „	*113 6*	*115 0*	*117 6*
16 „ „ 17 „	*99 0*	*101 0*	*103 0*
Under 16 years	*90 0*	*91 0*	*93 0*
(*d*) ROUNDS SALESMEN, being workers aged:—			
21 years or over	*194 0*	*196 6*	*200 6*
20 and under 21 years	*174 6*	*177 0*	*180 6*
19 „ „ 20 „	*160 0*	*162 0*	*165 6*
18 „ „ 19 „	*145 6*	*147 6*	*150 6*
Under 18 years	*126 0*	*127 6*	*130 6*
(*e*) SHOP ASSISTANTS, ASSISTANT ROUNDS SALESMEN, PASTEURIZERS, ASSISTANT STERILIZERS, and ANY OTHER WORKERS not specified in the foregoing provisions of this Table, being workers aged:—			
21 years or over	*184 6*	*187 0*	*191 0*
20 and under 21 years	*161 6*	*163 6*	*167 0*
19 „ „ 20 „	*147 6*	*149 6*	*153 0*
18 „ „ 19 „	*134 0*	*135 6*	*138 6*
17 „ „ 18 „	*110 6*	*112 0*	*114 6*
16 „ „ 17 „	*97 0*	*98 0*	*100 6*
Under 16 years	*87 6*	*89 0*	*90 6*

(ii) for all time worked thereafter ...	Time-and-a-half
Provided that on a Saturday time-and-a-half shall be payable for all time worked after 3 p.m.	
(*b*) On a Sunday, not being a customary holiday—	
(i) for any time worked not exceeding 5 hours	Time-and-a-half for 5 hours
(ii) for all time worked in excess of 5 hours	Time-and-a-half

WORK ON A CUSTOMARY HOLIDAY

7. Subject to the provisions of paragraphs 8 and 9, the following minimum remuneration is payable to any worker for work on a customary holiday:—

(1) In the case of a SIX-DAY WORKER to whom the provisions of paragraph 13 apply—

(*a*) On a customary holiday not being the worker's rest day—	
(i) for any time worked not exceeding 7½ hours	Time-and-a-half for 7½ hours
(ii) for all time worked in excess of 7½ hours	Double time
(*b*) On a customary holiday being also the worker's rest day—	
(i) for any time worked not exceeding 7½ hours	Double time-and-a-half for 7½ hours
(ii) for all time worked in excess of 7½ hours	Treble time

(2) In the case of a SIX-DAY WORKER to whom the provisions of paragraph 13 do not apply—

(*a*) On a customary holiday not being the worker's rest day—	
(i) for any time worked not exceeding 7½ hours	Double time for 7½ hours
(ii) for all time worked in excess of 7½ hours	Double time
(*b*) On a customary holiday being also the worker's rest day—	
(i) for any time worked not exceeding 7½ hours	Treble time for 7½ hours
(ii) for all time worked in excess of 7½ hours	Treble time

(3) In the case of a SEVEN-DAY WORKER (or of any other worker to whom paragraph 6 (1) does not apply) to whom the provisions of paragraph 13 do apply—

(*a*) For any time worked on a customary holiday not exceeding 6½ hours	Time-and-a-half for 6½ hours
(*b*) For all time worked in excess of 6½ hours	Double time

(4) In the case of a SEVEN-DAY WORKER (or of any other worker to whom paragraph 6 (1) does not apply) to whom the provisions of paragraph 13 do not apply—

(*a*) for any time worked on a customary holiday not exceeding 6½ hours	Double time for 6½ hours
(*b*) For all time worked in excess of 6½ hours	Double time

8. Where a worker to whom the provisions of paragraph 13 apply is required to work on a customary holiday, and it is mutually agreed between the employer and the worker (in accordance with the provisions of sub-paragraph (4) of paragraph 13) that a holiday in lieu of the customary holiday shall not be allowed to the worker the minimum remuneration payable to the worker in respect of work on that day shall be:—

(1) the amount to which the worker is entitled in accordance with the provisions of paragraph 7 for working on a customary holiday, and in addition,

(2) an amount equal to the holiday remuneration to which the worker would have been entitled under the provisions of paragraph 17 had he be allowed a holiday on that day.

OVERTIME BEING NIGHT WORK

9.—(1) In the application of the provisions of paragraphs 6, 7 and 8 to a worker to whom an additional minimum time rate is payable for night work under the provisions of paragraph 11—

(*a*) the minimum remuneration for overtime shall be payable only in respect of hours of overtime within the same turn of duty and

(*b*) a day shall be deemed to be any period of 24 hours commencing at noon.

(2) Where a worker is ordinarily employed on a spell of duty which starts before and ends after midnight the provisions of paragraphs 7 and 8 shall be applicable to time worked during the period of 24 hours commencing at noon on the day prior to the customary holiday.

WAITING TIME

10.—(1) A worker is entitled to payment of the minimum remuneration specified in this Schedule for all time during which he is present on the premises of his employer, unless he is present thereon in any of the following circumstances—

(*a*) without the employer's consent, express or implied;

(*b*) for some purpose unconnected with his work and other than that of waiting for work to be given to him to perform;

(*c*) by reason only of the fact that he is resident thereon;

(*d*) during normal meal times in a room or place in which no work is being done, and he is not waiting for work to be given to him to perform.

(2) The minimum remuneration payable under sub-paragraph (1) of this paragraph to a piece worker when not engaged on piece work is that which would be applicable if he were a time worker.

ADDITIONAL MINIMUM REMUNERATION

NIGHT WORK

11. In addition to the minimum remuneration payable to a worker under paragraphs 6, 7, 8, 9 and 10, minimum remuneration at the rate of 8d. per hour is payable to a worker for any time worked between the hours of 9 p.m. and 5 a.m.:

Provided that where a worker commences a spell of work between the hours of 9 p.m. and 5 a.m. and works for less than 4 hours between those hours he shall be paid as remuneration under this paragraph the sum of 2s. 8d. instead of at the rate of 8d. per hour.

PAYMENT IN RESPECT OF CUSTOMARY HOLIDAYS TO WORKERS TO WHOM THE PROVISIONS OF PARAGRAPH 13 DO NOT APPLY

12.—(1) Where a worker who is not entitled to be allowed a customary holiday under the provisions of paragraph 13 is not required to work on a day of customary holiday which falls on a day on which he normally works for the employer or on his rest day he shall be paid one day's pay.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph where a worker to whom this paragraph applies is not required to work on a customary holiday he shall not be entitled to any payment under that sub-paragraph unless he—

(*a*) worked for the employer throughout the last working day on which work was available for him preceding the holiday and

(*b*) presents himself for employment at the usual starting time on the first working day after the holiday, provided that—

(i) (*a*) or (*b*) as the case may be of this sub-paragraph shall be deemed to be complied with where the worker is excused by his employer or is prevented by his proved illness or injury from working or presenting himself for employment as aforesaid and

(ii) when two customary holidays on both of which the worker is not required to work occur on successive days or so that no working day intervenes (*b*) of this sub-paragraph shall apply only to the second customary holiday.

(3) In this paragraph the expression " one day's pay " means 7½th hours' pay at the hourly general minimum time rate normally applicable to the worker in the case of a six-day worker and 6½th hours' pay at the hourly general minimum time rate normally applicable to the worker in the case of any other worker.

PART II

HOLIDAYS AND HOLIDAY REMUNERATION

CUSTOMARY HOLIDAYS

13.—(1) Subject to the provisions of this paragraph, and, except in the circumstances provided for in sub-paragraph (3) of this paragraph, the employer shall in each year on the days specified in the next following sub-paragraph or in sub-paragraph (5) of this paragraph as the case may be allow a holiday (hereinafter referred to as a " customary holiday ") to any worker in his employment who—

(*a*) has been employed by him for not less than 12 months immediately preceding the customary holiday, and

(*b*) normally works for the employer for not less than 21½ hours a week, and

(*c*) unless excused by the employer or absent by reason of proved illness or injury of the worker, worked for the employer throughout the last working day on which work was available to him immediately prior to the customary holiday.

(2) The said customary holidays are Christmas Day, Boxing Day, Good Friday, Easter Monday, Whit Monday, the first Monday in August, and any day proclaimed as an additional Bank Holiday or as a public holiday, or where it is the custom in any locality instead of any of the said days to observe some other day as a holiday each such other day shall, for the purposes of this Schedule be treated in that locality as a customary holiday instead of the day for which it is 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 preceding provisions of this paragraph to work thereon and, in lieu of any customary holiday on which he so works, the employer shall (except in the case provided for in sub-paragraph (4) of this paragraph) allow to the worker a day's holiday (hereinafter referred to as "a holiday in lieu of a customary holiday") on a week day being:—

(*a*) a day mutually agreed between the employer and the worker, and

(*b*) a day (other than the weekly short day) on which the worker would normally work and

(*c*) (i) a day before the commencement of the next holiday season, or

(ii) in the case of Good Friday or Easter Monday or a day substituted for either of them in accordance with the foregoing provisions of this paragraph, falling before 1st April in any year, before the commencement of the holiday season in the next succeeding year:

Provided that in the absence of agreement between the employer and the worker a holiday in lieu of a customary holiday shall be allowed on the last day on which the worker would normally work prior to the commencement of the next holiday season or as the case may require the holiday season in the next succeeding year.

(4) Where a worker otherwise entitled to be allowed a customary holiday or holiday in lieu thereof under the foregoing provisions of this paragraph, is required to work on a customary holiday and it is mutually agreed between the employer and the worker before the customary holiday on which the worker works (for which he is to receive not less than the remuneration calculated in accordance with paragraph 8) that a holiday in lieu thereof shall not be allowed, the employer shall not be required to allow the worker a holiday in lieu of the customary holiday.

(5) Where a worker is ordinarily employed on a spell of duty which starts before and ends after midnight, he shall be allowed—

(*a*) as a customary holiday in his case the period of 24 hours commencing at noon on the day prior to the customary holiday;

(*b*) as a holiday in lieu of a customary holiday a period of 24 hours commencing at noon.

18. Where any accrued holiday remuneration has been paid by the employer to the worker in accordance with paragraph 19 of this Schedule or with Order M.D. (99) 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 or of Order M.D. (99).

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

19. 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 referred to as "the termination date"), pay to the worker as accrued holiday remuneration:—

(1) in respect of employment in the 12 months up to the end of the preceding March, 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 the end of the preceding March, a sum equal to the holiday remuneration 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:

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 misconduct 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 he is required to give not less than one week's notice before terminating his employment and the worker without the consent of his employer terminates his employment:—

(i) without having given not less than one week's notice, or

(ii) 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, in the case of (i), by the number of days constituting the worker's normal working week or, in the case of (ii), by the number of days which at the termination date would complete a normal working week commencing at the beginning of the notice.

CALCULATION OF EMPLOYMENT

20 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 21½ hours and has performed some work for which statutory minimum remuneration is payable; or

(ii) he has worked for the employer for less than 21½ 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 eight in any such period as aforesaid); and

(*b*) as if he were employed on any day of annual holiday allowed under the provisions of this Schedule and for the purpose of the provisions of sub-paragraph (*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 for which statutory minimum remuneration is payable.

OTHER HOLIDAY AGREEMENTS

21. 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.

PART III

GENERAL

DEFINITIONS

22. In this Schedule, the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) "AREA A" comprises—

(i) each area in England and Wales which on 31st December 1937, was administered by a Rural District Council; and

(ii) each area in England and Wales which on 31st December 1937, was administered by a Municipal Borough Council or an Urban District Council and which, according to the Registrar General's Statistical Review for 1937, had an estimated resident population (middle 1937) not exceeding 10,000,

but does not include any area within the Metropolitan Police District as existing on 31st December 1937.

(*b*) "AREA B" comprises the whole of England and Wales other than Area A and Area C.

(*c*) "AREA C" comprises the City of London and the Metropolitan Police District as existing on 31st December 1937.

(*d*) "CLERK" means a person employed, wholly or mainly, on clerical work.

(*e*) "CUSTOMARY HOLIDAY" has the meaning assigned to it in sub-paragraph (2) of paragraph 13.

(*f*) "FOREMAN" means a person to whom is deputed the duty of exercising supervisory authority over workers exceeding 5 in number (exclusive of the foreman).

(*g*) "HOURLY GENERAL MINIMUM TIME RATE" has the meaning assigned to it in sub-paragraph (2) of paragraph 1.

(*h*) "NIGHT WORKER" means a worker who is ordinarily employed on a spell of duty which starts before and ends after midnight.

(*i*) "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 19, accrued holiday remuneration is payable on the termination of the employment, during the 12 months immediately preceding the termination date:

Provided that—

(i) for the purpose of calculating the normal working week part of a a day shall count as a day;

(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;

(iii) in the case of a night worker, a day is the period of 24 hours commencing at noon.

(*j*) "ONE DAY'S HOLIDAY PAY" means, where the worker's normal working week is:—

7 days—one-seventh of
6 days—one-sixth of
5 days—one-fifth of
4 days—one-quarter of
3 days—one third of

the remuneration which the worker would be entitled to receive from his employer at the date of the annual holiday or at the termination date, as the case may be, for work for which statutory minimum remuneration is payable, either:—

(i) for the number of hours normally worked by him for the employer in his normal working week, or

(ii) for 43 hours,

whichever number of hours is the less, if paid at the appropriate hourly general minimum time rate for that number of hours work.

(*k*) "OVERTIME" means work for which minimum remuneration is payable under paragraphs 6, 7, 8 and 9.

(*l*) "TIME-AND-A-QUARTER", "TIME-AND-A-HALF", "DOUBLE TIME", "DOUBLE TIME-AND-A-HALF" and "TREBLE TIME" mean respectively one and a quarter times, one and a half times, twice, two and a half times and three times the hourly general minimum time rate (exclusive of any amount payable under paragraph 11 in respect of time worked between 9 p.m. and 5 a.m.) which would be payable to the worker for work other than overtime.

(*m*) "REST DAY" means that day of the week on which a six-day worker is not normally required to work.

(*n*) "ROUNDS SALESMAN" or "ROUNDS SALESWOMAN" means a person who is employed, wholly or mainly, as a salesman on a defined or established route, and is responsible for keeping account of his retail sales to customers and of any cash or tokens received in payment and is not accompanied, save in exceptional circumstances, by any other person who exercises control or supervision.

(*o*) "SHOP ASSISTANT" means a person employed, wholly or mainly, in a shop in serving customers or in checking in and out or in both such operations.

(*p*) "SIX-DAY WORKER" means a worker whose attendance is normally required by the employer on 6 days only in the week.

(*q*) "SPELL OF DUTY" means a period of work broken only by intervals for meals.

(*r*) "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 Milk Distributive Wages Council (England and Wales).

(*s*) "WEEK" means pay week.

WORKERS TO WHOM THE SCHEDULE APPLIES

23. This Schedule applies to workers in relation to whom the Milk Distributive Wages Council (England and Wales) operates, that is to say, workers employed in England and Wales in the trade specified in the Schedule to the Trade Boards (Milk Distributive Trade, England and Wales) (Constitution and Proceedings) Regulations 1928(a), which reads as follows:—

"1. Subject as hereinafter provided, the Milk Distributive Trade shall consist of the following operations:—

(i) the wholesale and retail sale of milk;

(ii) the sale of other goods by workers mainly employed in the sale specified in paragraph 1 (i) hereof;

(iii) all work incidental to the sale specified in paragraph 1 (i) hereof.

2. Work incidental to the sale specified in paragraph 1 (i) hereof shall include, *inter alia*:—

(*a*) collecting, delivering, despatching;

(*b*) pasteurising, sterilising, homogenising, humanising, cooling, separating and all work performed in connection with any other processes in the preparation of milk;

(*c*) blending, testing and sampling of milk;

(*d*) cleaning of utensils, receptacles, vehicles, premises, plant, machinery;

(*e*) stoking, attending to boiler, plant or machinery, fire lighting, portering of coal or other fuel;

(*f*) horse keeping and harness cleaning;

(*g*) portering, lift or hoist-operating, time-keeping, storing, stock-keeping, warehousing;

(*h*) boxing, parcelling, labelling, weighing, measuring, checking, bottling, packing and unpacking;

(*i*) clerical work or canvassing carried on in conjunction with the work specified in paragraph 1 hereof.

3. Notwithstanding any of the foregoing provisions, the Milk Distributive Trade shall not include any of the following operations:—

(*a*) the wholesale sale of milk (and operations incidental thereto) from an establishment at which milk products are manufactured and from which unseparated milk is not ordinarily sold as such;

(*b*) the wholesale sale of milk direct from the farm where the milk was produced and all operations incidental thereto;

(*c*) the sale of milk in restaurants, shops or similar premises by waiters or shop assistants who are not mainly engaged upon such sale;

(*d*) the transport of goods by common carriers;

(*e*) carting and operations incidental thereto where the business carried on consists exclusively of such operations;

(*f*) work done by or on behalf of the Post Office.

4. For the purpose of this Schedule the expression 'milk' means milk other than dried or condensed milk."

(a) S.R. & O. 1928/480 (1928, p. 1281).

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order, which has effect from 14th April 1963, sets out the statutory minimum remuneration payable and the holidays to be allowed to workers in substitution for the statutory minimum remuneration fixed by the Wages Regulation (Milk Distributive) (England and Wales) Order 1962 (Order M.D. (99)), which is revoked.

New provisions are printed in italics.