STATUTORY INSTRUMENTS

1973 No. 122

WAGES COUNCILS

The Wages Regulation (Milk Distributive) (England and Wales) Order 1973

Made - - - -	*29th January* 1973
Coming into Operation	*28th February* 1973

Whereas the Secretary of State has received from the Milk Distributive Wages Council (England and Wales) the wages regulation proposals set out in the Schedule hereto;

Now, therefore, the Secretary of State in exercise of powers conferred by section 11 of the Wages Councils Act 1959(**a**), as modified by Article 2 of the Counter-Inflation (Wages Councils) Order 1972(**b**), and now vested in him(**c**), 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 1973.

2.—(1) In this Order the expression "the specified date" means the 28th February 1973, 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(**d**) 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 Orders 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 1971(**e**) and the Wages Regulation (Milk Distributive) (England and Wales) (Amendment) Order 1972(**f**) shall cease to have effect.

Signed by order of the Secretary of State.
29th January 1973.

W. H. Marsh,
Assistant Secretary,
Department of Employment.

(**a**) 1959 c. 69.
(**b**) S.I. 1972/1856 (1972 III, p. 5399).
(**c**) S.I. 1959/1769, 1968/729 (1959 I, p. 1795; 1968 II, p. 2108).
(**d**) 1889 c. 63.
(**e**) S.I. 1971/1698 (1971 III, p. 4635).
(**f**) S.I. 1972/482 (1972 I, p. 1721).

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Article 3

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 1971 (Order M.D. (115)) as amended by the Wages Regulation (Milk Distributive) (England and Wales) (Amendment) Order 1972 (Order M.D. (117)).

PART I
STATUTORY MINIMUM REMUNERATION
GENERAL

1. 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 4, 5 and 6 divided by *40*.

2. Subject to paragraph 3, the minimum remuneration payable 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 7, 8, 9, 10 and 11; and

(*c*) Any further amount payable under paragraph 12.

SPECIAL PROVISIONS FOR CERTAIN ROUNDS SALESMEN AND ROUNDS SALESWOMEN

3. Where a rounds salesman or a rounds saleswoman is employed under a system of calculating remuneration which is not related to the general minimum time rate specified in relation to that worker in paragraph 4(4) or paragraph 5(1) the minimum remuneration payable to that worker for any week in which he works on not less than 5 days shall be whichever is the greater of the following amounts, that is to say:—

(*a*) *the appropriate amount calculated in accordance with paragraph 2 for a time worker of the relevant class and description; or*

(*b*) *an amount equal to the general minimum time rate specified in relation to a worker of the relevant class and description under paragraph 4(4) or paragraph 5(1) increased by the following amount:—*

	Per week
	p
in the case of a worker aged 21 years or over	*80*
„ „ „ „ „ „ „ *20 and under 21 years*	*74*
„ „ „ „ „ „ „ *19* „ „ *20* „	*68*
„ „ „ „ „ „ „ *18* „ „ *19* „	*62*
„ „ „ „ „ „ „ *under 18 years*	*48*

GENERAL MINIMUM TIME RATES

MALE WORKERS

4. 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
	£	£	£
(1) Foreman	*19·55*	*19·80*	*20·15*
(2) Sterilizers (other than assistant sterilizers), being workers aged 21 years or over	*18·85*	*19·00*	*19·20*
(3) Clerks, being workers aged:—			
21 years or over	*18·85*	*19·00*	*19·20*
20 and under 21 years	*17·45*	*17·60*	*17·75*
19 „ „ 20 „	*16·00*	*16·15*	*16·30*
18 „ „ 19 „	*14·60*	*14·75*	*14·90*
17 „ „ 18 „	*11·30*	*11·40*	*11·50*
16 „ „ 17 „	*9·90*	*10·00*	*10·10*
Under 16 years	*8·95*	*9·05*	*9·10*
(4) Rounds Salesmen, being workers aged:—			
21 years or over	*19·10*	*19·20*	*19·40*
20 and under 21 years	*17·65*	*17·75*	*17·95*
19 „ „ 20 „	*16·25*	*16·30*	*16·50*
18 „ „ 19 „	*14·80*	*14·90*	*15·05*
Under 18 years	*12·40*	*12·50*	*12·60*
(5) 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	*18·60*	*18·75*	*18·95*
20 and under 21 years	*17·20*	*17·35*	*17·55*
19 „ „ 20 „	*15·80*	*15·95*	*16·10*
18 „ „ 19 „	*14·40*	*14·55*	*14·70*
17 „ „ 18 „	*11·15*	*11.25*	*11·35*
16 „ „ 17 „	*9·75*	*9·85*	*9·95*
Under 16 years	*8·85*	*8·90*	*9·00*

FEMALE WORKERS

5. The general minimum time rates applicable to female 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
	£	£	£
(1) Rounds Saleswomen, being workers aged:—			
21 years or over	*18·40*	*18·50*	*18·80*
20 and under 21 years	*17·00*	*17·10*	*17·40*
19 „ „ 20 „	*15·65*	*15·75*	*16·00*
18 „ „ 19 „	*14·25*	*14·35*	*14·55*
Under 18 years	*11·95*	*12·05*	*12·20*
(2) Clerks, being workers aged:—			
21 years or over	*16·20*	*16·25*	*16·55*
20 and under 21 years	*15·80*	*15·85*	*16·15*
19 „ „ 20 „	*14·60*	*14·65*	*14·90*
18 „ „ 19 „	*13·35*	*13·40*	*13·65*
17 „ „ 18 „	*10·95*	*10·95*	*11·15*
16 „ „ 17 „	*9·70*	*9·75*	*9·95*
Under 16 years	*8·50*	*8·55*	*8·70*
(3) All Other Workers, being workers aged:—			
21 years or over	*16·25*	*16·30*	*16·50*
20 and under 21 years	*15·85*	*15·90*	*16·10*
19 „ „ 20 „	*14·65*	*14·65*	*14·85*
18 „ „ 19 „	*13·40*	*13·45*	*13·60*
17 „ „ 18 „	*10·95*	*11·00*	*11·15*
16 „ „ 17 „	*9·75*	*9·80*	*9·90*
Under 16 years	*8·55*	*8·55*	*8·65*

MALE OR FEMALE WORKERS IN TWO OR MORE AREAS

6. The general minimum time rate applicable to any worker in any week in which he works in Area A, Area B and Area C or in any two of those areas is:—

(1) in the case of a rounds salesman or rounds saleswoman, the rate which would be applicable if he worked solely in that Area in which is served the majority of the customers on his round;

(2) in the case of any other worker, the rate which would be applicable if he worked solely at his depot.

OVERTIME, WORK ON A CUSTOMARY HOLIDAY AND WAITING TIME

OVERTIME

7. Subject to the provisions of paragraph 11, the following minimum remuneration is payable to any worker for overtime:—

(1) On any week day, not being a rest day or a customary holiday, for all time worked in excess of *8* hours ... time-and-a-half

(2) On a Sunday, not being a rest day or a customary holiday—

(*a*) for any time worked not exceeding 5 hours ...	time-and-a-half for 5 hours
(*b*) for all time worked in excess of 5 hours ...	time-and-a-half

(3) On a Sunday, being also a rest day but not being a customary holiday—

(*a*) for any time worked not exceeding 6 hours ...	double time for 6 hours
(*b*) for all time worked in excess of 6 hours ...	double time

(4) On a rest day, not being a Sunday or a customary holiday, for all time worked ... ... time-and-a-half

WORK ON A CUSTOMARY HOLIDAY

8. Subject to the provisions of paragraphs 9 and [1]1, the following minimum remuneration is payable for work on a customary holiday:—

(1) To any worker who normally works for an employer for not less than *20* hours per week—

(*a*) On a customary holiday not being the worker's rest day—

(i) for any time worked not exceeding 6 hours	double time for 6 hours
(ii) for all time worked in excess of 6 hours ...	double time

(*b*) On a customary holiday being also the worker's rest day—

(i) for any time worked not exceeding 6 hours	treble time for 6 hours
(ii) for all time worked in excess of 6 hours ...	treble time

(2) To all other workers—

for all time worked ... ... double time

9. 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 8 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 18 had he been allowed a holiday on that day.

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.

OVERTIME BEING NIGHT WORK

11.—(1) In the application of the provisions of paragraphs 7, 8 and 9 to a worker to whom an additional minimum time rate is payable for night work under the provisions of paragraph 12—

(*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 8 and 9 shall be applicable to time worked during the period of 24 hours commencing at noon on the day prior to the customary holiday.

ADDITIONAL MINIMUM REMUNERATION NIGHT WORK

12. In addition to the minimum remuneration payable to a worker under paragraphs 7, 8, 9, 10 and 11, minimum remuneration at the rate of 5p 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 20p instead of at the rate of 5p per hour.

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*) normally works for the employer for not less than *20* hours a week, and

(*b*) 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 (or where another day is substituted therefor by national proclamation, that day), August Bank Holiday 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,

(*b*) a day on which the worker would normally work and

(*c*) a day before the commencement of the next holiday season or 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 9) 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 on 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.

ANNUAL HOLIDAY

14.—(1) Subject to the provisions of this paragraph, an employer shall, between 1st April 1973 and 31st October 1973, and in each succeeding year between 1st April and 31st October allow a holiday (hereinafter referred to as an "annual holiday") to every worker in his employment to whom this Schedule applies who was employed by him during the 12 months immediately preceding the commencement of the holiday season for any one of the periods of employment 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:—		
	5 days	4 days	3 days
At least 5 weeks but less than 6	1 day	—	—
„ „ 6 „ „ „ „ 7	1 „	1 day	—
„ „ 7 „ „ „ „ 8	1 „	1 „	—
„ „ 8 „ „ „ „ 10	1 „	1 „	1 day
„ „ 10 „ „ „ „ 11	2 days	1 „	1 „
„ „ 11 „ „ „ „ 12	2 „	1 „	1 „
„ „ 12 „ „ „ „ 14	2 „	2 days	1 „
„ „ 14 „ „ „ „ 15	2 „	2 „	1 „
„ „ 15 „ „ „ „ 16	3 „	2 „	1 „
„ „ 16 „ „ „ „ 18	3 „	2 „	2 days
„ „ 18 „ „ „ „ 20	3 „	3 „	2 „
„ „ 20 „ „ „ „ 21	4 „	3 „	2 „
„ „ 21 „ „ „ „ 24	4 „	3 „	2 „
„ „ 24 „ „ „ „ 25	4 „	4 „	3 „
„ „ 25 „ „ „ „ 28	1 normal working week	4 „	3 „
„ „ 28 „ „ „ „ 30	1 „ „ „	4 „	3 „
„ „ 30 „ „ „ „ 32	1 „ „ „ and 1 day	5 „	3 „
„ „ 32 „ „ „ „ 35	1 „ „ „ „ 1 „	5 „	4 „
„ „ 35 „ „ „ „ 36	1 „ „ „ „ 2 days	5 „	4 „
„ „ 36 „ „ „ „ 39	1 „ „ „ „ 2 „	6 „	4 „
„ „ 39 „ „ „ „ 40	1 „ „ „ „ 2 „	6 „	4 „
„ „ 40 „ „ „ „ 42	1 „ „ „ „ 3 „	6 „	5 „
„ „ 42 „ „ „ „ 44	1 „ „ „ „ 3 „	7 „	5 „
„ „ 44 „ „ „ „ 45	1 „ „ „ „ 3 „	7 „	5 „
„ „ 45 „ „ „ „ 46	1 „ „ „ „ 4 „	7 „	5 „
„ „ 46 „ „ „ „ 48	1 „ „ „ „ 4 „	7 „	5 „
„ „ 48 „ „ „ „ 49	1 „ „ „ „ 4 „	8 „	6 „
„ „ 49 „ „ „ „ 50	1 „ „ „ „ 4 „	8 „	6 „
„ „ 50	2 normal working weeks	8 „	6 „

(2) In this Schedule the expression "holiday season" means in relation to an annual holiday during the year 1973, the period commencing on 1st April 1973, and ending on 31st October 1973, and in relation to each subsequent year, the period commencing on 1st April and ending on 31st October in that year.

(3) Notwithstanding the provisions of sub-paragraph (1) of this paragraph:—

(*a*) 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;

(*b*) where before the expiration of any holiday season a worker enters into an agreement in writing with his employer that the annual holiday or part thereof shall be allowed on a specified date or dates after the expiration of the holiday season but before the commencement of the next following holiday season, then any day or days of annual holiday so allowed shall for the purposes of this Schedule be treated as having been allowed during the holiday season;

(*c*) The revocation of Orders M.D. (115) and M.D. (117) shall not affect the right of a worker to be allowed a day or days of annual holiday pursuant to an agreement entered into under the provisions of paragraph 12(3)(*b*) of the Schedule to Order M.D. (115) in relation to the holiday season which ended on 31st October 1972.

(4) A night worker shall be allowed as a day of annual holiday in his case, a period of 24 hours commencing at noon.

15.—(1) 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, and days of annual holiday shall be treated as consecutive notwithstanding the intervention of a customary holiday on which the worker is not required to work or of some other holiday:

Provided that 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 at the written request of the worker and with the agreement of the employer 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.

(2) A 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.

ADDITIONAL ANNUAL HOLIDAY

16.—(1) In addition to the holidays specified in paragraphs 13 and 14 of this Schedule and subject to the provisions of this paragraph, an employer shall, during the relevant period of 12 months commencing on 1st April 1972 and during each succeeding relevant period of 12 months, allow an additional annual holiday amounting to one normal working week to every worker in his employment to whom this Schedule applies, who—

(*a*) at 31st March immediately preceding the relevant period of 12 months has been continuously employed by him for not less than 12 months, and

(*b*) during the 12 months ending on the said 31st March has worked for a period qualifying him in accordance with paragraph 14 for an annual holiday equal in duration to twice his normal working week.

(2) Days of additional annual holiday need not be consecutive and shall be allowed—

(*a*) on days on which the worker is normally called upon to work for the employer, and

(*b*) at any time after the holiday season but during the relevant period of 12 months either on dates agreed between the employer and the worker at any time before 21st March in that period, or during the remaining days of that period:

Provided that where the employer so decides, any day or days of additional annual holiday may be allowed during the holiday season.

(3) The duration of the worker's additional annual holiday during the 12 months commencing on 1st April 1972, shall be reduced by any days of additional annual holiday duly allowed to him by the employer under the provisions of Order M.D. (115) as amended, between 1st April 1972 and the date on which the provisions of this Schedule become effective.

GENERAL

17. An employer shall give to a worker reasonable notice of the commencing date or dates and of the duration of his annual holiday and of any days of additional annual holiday not previously agreed. Such notice may be given individually to the worker or by the posting of a notice in the place where the worker is employed.

HOLIDAY REMUNERATION

18.—(1)(*a*) Subject to the provisions of this paragraph, for each customary holiday or day in lieu of a customary holiday, which a worker is entitled to be allowed under this Schedule, he shall be paid by the employer one day's holiday pay as defined in the appropriate part of paragraph 23:

Provided, however, that payment of the above-mentioned 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 or day in lieu, or, if he fails to do so, failure is by reason of the proved illness or injury of the worker or with the consent of the employer, and

Provided also that 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, the above proviso shall apply only to the second customary holiday.

(*b*) Subject to the provisions of this paragraph, holiday remuneration in respect of any customary holiday or day in lieu of a customary holiday shall be paid by the employer to the worker on the pay day on which the wages for the first working day following the holiday or day in lieu are paid:

Provided that if a worker ceases to be employed before being allowed a holiday in lieu of a customary holiday to which he is entitled the said payment shall be made immediately upon the termination of his employment.

(2) Subject to the provisions of paragraph 19, a worker qualified to be allowed an annual holiday or any days of additional annual holiday under this Schedule shall be paid by his employer one day's holiday pay as defined in the appropriate part of paragraph 23 in respect of each day thereof, and in the case of annual holiday such payment shall be made by the employer on the last pay day preceding such annual holiday.

(3) Where under the provisions of paragraph 15 an annual holiday is allowed in more than one period the holiday remuneration shall be apportioned accordingly.

19. Where any accrued holiday remuneration has been paid by the employer to the worker in accordance with paragraph 20 of this Schedule or with Order M.D. (115) as amended 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 or days of additional 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. (115) as amended.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

20. 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 or additional annual holiday for which he has qualified, except days of annual holiday or additional 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*) 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 period of employment at the time of leaving it; and

(*b*) in addition, in the case of a worker who has qualified for an additional annual holiday in accordance with the provisions of paragraph 16, one day's holiday pay in respect of each of the following periods occurring between the end of the preceding March and the termination date, in the case of a worker with a normal working week of—

5 days—a period of not less than 10 weeks;
4 „ —„ „ „ „ „ „ 12 „
3 „ —„ „ „ „ „ „ 16 „

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

21. For the purposes of calculating any period of employment qualifying a worker for an annual holiday or days of additional 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 *20* hours and has performed some work for which statutory minimum remuneration is payable; or

(*b*) he has worked for the employer for less than *20* 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

(2) as if he were employed on any day of annual holiday or additional annual holiday allowed under the provisions of this Schedule 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 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

22. 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

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

(1) "AREA A" comprises—

(*a*) each area in England and Wales which is administered by a Rural District Council; and

(*b*) each area in England and Wales which at the date of the 1961 census was administered by a Municipal Borough Council or an Urban District Council and which, according to the census had a population not exceeding 10,000,

but does not include any area within the Metropolitan Police District.

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

(3) "AREA C" comprises the Metropolitan Police District, as defined in the London Government Act 1963(a), the City of London, the Inner Temple and the Middle Temple.

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

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

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

(7) "HOURLY GENERAL MINIMUM TIME RATE" has the meaning assigned to it in paragraph 1.

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

(9) "NORMAL WORKING WEEK" means:—

(*a*) in the case of a rota worker the total number of days (excluding rest days) on which the worker has ordinarily worked for the employer during the periods of rota during the 12 months immediately preceding the commencement of the holiday season, or where under paragraph 20 accrued holiday remuneration is payable, during the 12 months immediately preceding the termination date, divided by the total number of weeks in the said periods of rota;

(*b*) in the case of any other worker the number of days (excluding rest days) on which it has been usual for the worker to work for the employer in a week during the 12 months immediately preceding the commencement of the holiday season, or where under paragraph 20 accrued holiday remuneration is payable, during the 12 months immediately preceding the termination date: provided that in either case—

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

(ii) except in the case of a rota worker's rest days, 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 a period of 24 hours commencing at noon.

(10) "ONE DAY'S HOLIDAY PAY" means:—

in relation to customary holidays, the appropriate proportion of the remuneration which the worker would be entitled to receive from his employer at the date of the customary holiday for work for which statutory minimum remuneration is payable, either—

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

(*b*) for *40* hours,

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

in relation to an annual holiday or additional annual holiday—

(*a*) in the case of a worker who has at 31st March immediately preceding the commencement of the holiday season (or the last holiday season as the case may require) completed 12 months' service with the employer, the appropriate proportion of whichever of the following amounts is the greatest—

(a) 1963 c. 33.

(i) 85% of the average weekly earnings of the worker during the 12 months ended on 5th April immediately preceding the holiday or the termination date, as the case may be, such average weekly earnings to be determined by dividing the total remuneration paid to the worker by the employer during the said 12 months by the number of weeks in respect of which it has been paid; or

(ii) the holiday remuneration payable for a week of annual or additional annual holiday under the arrangement in force between the employer and the worker at the date of such holiday or at the termination date as the case may be; or

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

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

for *40* hours,

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

(*b*) in the case of any other worker, the appropriate proportion of a week's holiday remuneration as set out in (*a*)(iii) above.

In this definition "appropriate proportion" means where the worker's normal working week is

5 days—one-fifth; or

4 days—one-quarter; or

3 days—one-third.

(11) "OVERTIME" means work for which minimum remuneration is payable under paragraphs 7, 8, 9 and 10.

(12) "REST DAYS" means two days in each week which have been notified to the worker by the employer before the commencement of the week as rest days, or, failing such notification, the last two days in the week; and "REST DAY" means one of these days:

Provided that in the case of a rota worker "REST DAYS" means any such days calculated at the rate of two days for each week in the period of rota.

(13) "ROTA WORKER" means a worker employed under an agreement which provides that his rest days should be taken according to a rota over a period not exceeding 12 weeks.

(14) "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.

(15) "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.

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

(17) "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 Milk Distributive Wages Council (England and Wales).

(18) "TIME-AND-A-HALF", "DOUBLE TIME" and "TREBLE TIME" mean respectively one and a half times, twice and three times the hourly general minimum time rate (exclusive of any amount payable under paragraph 12 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.

(19) "WEEK" means "pay week".

WORKERS TO WHOM THE SCHEDULE APPLIES

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

(*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."

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order, which has effect from 28th February 1973, sets out the statutory minimum remuneration payable and the holidays to be allowed to workers in substitution for the statutory minimum remuneration and holidays provided for by the Wages Regulation (Milk Distributive) (England and Wales) Order 1971 (Order M.D.(115)) as amended by the Wages Regulation (Milk Distributive) (England and Wales) (Amendment) Order 1972 (Order M.D. (117)), which Orders are revoked.

New provisions are printed in italics.

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