STATUTORY INSTRUMENTS

1971 No. 649

WAGES COUNCILS

The Wages Regulation (Milk Distributive) (Scotland) Order 1971

Made - - - -	19*th April* 1971
Coming into Operation	19*th May* 1971

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

Now, therefore, the Secretary of State in exercise of his powers under section 11 of the Wages Councils Act 1959(a) and of all other powers enabling him in that behalf, hereby makes the following Order:—

1. This Order may be cited as the Wages Regulation (Milk Distributive) (Scotland) Order 1971.

2.—(1) In this Order the expression "the specified date" means the 19th May 1971, provided that where, as respects any worker who is paid wages at intervals not exceeding seven days, that date does not correspond with the beginning of the period for which the wages are paid, the expression "the specified date" means, as respects that worker, the beginning of the next such period following that date.

(2) The Interpretation Act 1889(b) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament and as if this Order and the Order hereby revoked were Acts of Parliament.

3. The wages regulation proposals set out in the Schedule hereto shall have effect as from the specified date and as from that date the Wages Regulation (Milk Distributive) (Scotland) Order 1970(c) shall cease to have effect.

Signed by order of the Secretary of State.

19th April 1971.

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

(a) 1959 c. 69.
(b) 1889 c. 33.
(c) S.I. 1970/1366 (1970 III, p. 4563).

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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 set out in the Wages Regulation (Milk Distributive) (Scotland) Order 1970 (hereinafter referred to as "Order M.D.S. (95)").

PART I

STATUTORY MINIMUM REMUNERATION

GENERAL

1.—(1) Subject to the provisions of paragraphs 3, 5, 6 and 7, the minimum remuneration payable to a worker to whom this Schedule applies for all work except work to which a minimum overtime rate applies under paragraph 4 is:—

(*a*) in the case of a time worker, the hourly general minimum time rate payable to the worker under the provisions of this Schedule;

(*b*) in the case of a worker employed on piece work, 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 payable if the worker were a time worker.

(2) In this Schedule, the expression "hourly general minimum time rate" means the general minimum time rate applicable to the worker under paragraph 2 divided by 42.

GENERAL MINIMUM TIME RATES

MALE OR FEMALE WORKERS

2. The general minimum time rates applicable to male or female workers are as follows:—

		Per week £
(1)	Foremen	15·65
(2)	Forewomen	15·65
(3)	Chargehands	13·45
(4)	Male Clerks aged 22 years or over	15·25
(5)	The following workers:—	
	(*a*) All other male workers	
	(*b*) Roundswomen and female workers employed in garaging, pasteurising or milk sterilising	
	the said workers being aged:—	
	21 years or over	15·00
	20 and under 21 years	13·50
	19 „ „ 20 „	12·00
	18 „ „ 19 „	10·85
	17 „ „ 18 „	9·00
	16 „ „ 17 „	7·85
	under 16 years	7·10
(6)	All other female workers (including Assistant Roundswomen, Clerks and Shop Assistants) being aged:—	
	21 years or over	11·90
	20 and under 21 years	11·00
	19 „ „ 20 „	10·15
	18 „ „ 19 „	9·25
	17 „ „ 18 „	8·05
	16 „ „ 17 „	7·15
	under 16 years	6·25

EARLY OR NIGHT WORK

3.—(1) A worker who ordinarily works, wholly or partly, between the hours of 10 p.m. and 6 a.m. shall be paid, in addition to any hourly general minimum time rate or minimum overtime rate payable to him in respect of such work under the provisions of this Schedule, $3\frac{1}{2}p$ in respect of each hour or part of an hour worked by him between the said hours of 10 p.m. and 6 a.m.

(2) A worker who is required, in addition to his usual working hours on any day, to work for any time between 12 midnight and 6 a.m. shall be paid in respect of all time worked outside his usual working hours between 12 midnight and 6 a.m. twice the hourly general minimum time rate otherwise applicable to him: Provided that such additional time worked shall not be regarded as time worked for the purpose of calculating any minimum overtime rate.

MINIMUM OVERTIME RATES

4. Subject to the provisions of paragraphs 3, 5, 6 and 7 minimum overtime rates are payable as follows:—

(1) to any worker who normally works for more than 21 hours per week—

(*a*) on a Sunday, not being a rest day or 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

(*b*) on a Sunday, being also a rest day but not being a customary holiday—

(i) for any time worked not exceeding 4 hours ...	double time for 4 hours
(ii) for all time worked in excess of 4 hours ...	double time

(*c*) on a rest day, not being a Sunday or 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

(2) to workers other than those referred to in sub-paragraph (1) above—

(*a*) for work on a customary holiday—for all time worked	double time
(*b*) on a rest day for all time worked	time-and-a-half

(3) to any worker in any week exclusive of any time in respect of which a minimum overtime rate is payable under the foregoing provisions of this paragraph or under the provisions of paragraph 5(3) for all time worked in excess of 42 hours:—

(*a*) for the first 4 hours worked	time-and-a-quarter
(*b*) thereafter	time-and-a-half

Provided that in the case of a rota worker whose normal hours are fixed in respect of each week of the period of rota by his employer and the hours so fixed average 42 per week over a period of rota, the preceding sub-paragraph shall apply as respects each week of the period of rota as if for the expression "42 hours" there were substituted a reference to the number of hours fixed by the employer as aforesaid in respect of that week.

REMUNERATION FOR CUSTOMARY HOLIDAYS

5.—(1) This paragraph applies to workers who normally work for the employer for more than 21 hours a week.

(2) Where a worker to whom this paragraph applies—

(*a*) is not required to work on a customary holiday,

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

(*c*) presents himself for employment at the usual starting time on the first working day after a customary holiday,

he shall be paid for the customary holiday the amount to which he would have been entitled under paragraph 2 had the day not been a customary holiday, and had he worked on a day other than a rest day the number of hours ordinarily worked by him on that day of the week (or eight and two-fifths hours in the case of a worker who does not ordinarily work on that day of the week): Provided that the condition set out in (*b*) or (*c*) of this sub-paragraph shall be deemed to be satisfied 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.

(3) Where a worker to whom this paragraph applies works on a customary holiday *he shall be paid for time worked on the customary holiday as follows:—*

(*a*) *on a customary holiday, not being a rest day—*

(*i*) *for any time worked not exceeding eight and two-fifths hours*	*double time for eight and two-fifths hours*
(*ii*) *for all time worked in excess of eight and two-fifths hours*	*double time*

(b) on a customary holiday which is also a rest day—

(i) for any time worked not exceeding eight and two-fifths hours ... ... treble time for eight and two-fifths hours

(ii) for all time worked in excess of eight and two-fifths hours ... ... treble time;

and IN ADDITION, the worker shall be allowed a holiday in lieu of the customary holiday on a day other than a rest day or any other customary holiday, such day in lieu to be fixed by agreement between the employer and the worker or his representative, before the next following 1st March:

Provided that, in the absence of agreement between the employer and the worker or his representative, a day of holiday in lieu of each such customary holiday shall be allowed on the last day or days when the worker would otherwise work before the next following 1st March.

(4) *The worker shall be paid for a holiday in lieu of a customary holiday as if it were a customary holiday on which he was not required to work.*

6. In this Part of this Schedule the expressions "time-and-a-quarter", "time-and-a-half", "double time" and "*treble time*" mean respectively one and a quarter times, one and a half times, twice and *three times* the hourly general minimum time rate.

WAITING TIME

7.—(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 payable if he were a time worker.

PART II

HOLIDAYS AND HOLIDAY REMUNERATION

ANNUAL HOLIDAY

8.—(1) Subject to the provisions of sub-paragraph (3) of this paragraph, an employer shall between the date on which the provisions of this Schedule become effective and 31st October 1971, and between 1st April and 31st October in each succeeding year, 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 of the periods of employment (calculated in accordance with the provisions of paragraph 16) specified in the table below, and the duration of the 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
At least 48 weeks	2 normal working weeks
" " 44 "	1 " " week and 4 days
" " 39 "	1 " " " " 3 "
" " 35 "	1 " " " " 2 "
" " 31 "	1 " " " " 1 day
" " 22 "	1 " " "
" " 18 "	4 days
" " 13 "	3 "
" " 4 "	1 day

(2) In this Schedule the expression "holiday season" means in relation to an annual holiday during the year 1971, the period commencing on 1st April 1971, and ending on 31st October 1971, 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*) the duration of the worker's annual holiday during the holiday season ending on 31st October 1971, shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order M.D.S. (95) between 1st April 1971 and the date on which the provisions of this Schedule become effective.

9. Subject to the provisions of paragraph 11, 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 that some other holiday, a rest day or a day upon which the worker is not normally required to work for the employer intervenes.

ADDITIONAL ANNUAL HOLIDAY

10.—(1) Subject to the provisions of this paragraph, in addition to the holiday specified in paragraph 8 an employer shall, in the year commencing on 1st April 1971 and in each succeeding year commencing on 1st April, allow a further annual holiday (hereinafter referred to as an "additional annual holiday") to every worker in his employment to whom this Schedule applies who—

(*a*) at 31st March immediately preceding the relevant year has been continuously employed by him for not less than one year; and

(*b*) during the year ending on the said 31st March has worked for a period qualifying him in accordance with paragraphs 8 and 16 for an annual holiday equal in duration to twice his normal working week.

(2) The duration of the additional annual holiday shall be in accordance with the next following table:—

Period of continuous employment at 31st March immediately preceding the year in which the additional annual holiday is to be allowed.	Duration of additional annual holiday
At least 3 years	1 normal working week
„ „ 2 „	4 days
„ „ 1 year	2 „

(3) 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 year 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.

GENERAL

11. A day of annual holiday or additional annual holiday shall not be allowed to a worker on a rest day or on any day on which he is entitled to a holiday under any enactment other than the Wages Councils Act 1959.

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

HOLIDAY REMUNERATION

13. Subject to the provisions of paragraph 14, a worker qualified to be allowed an annual holiday or additional annual holiday under this Schedule shall be paid by his employer in respect thereof, on the last pay day preceding such annual holiday, one day's holiday pay as defined in paragraph 18 in respect of each day thereof.

14. Where in accordance with the provisions of this Schedule, or of Order M.D.S. (95), any accrued holiday remuneration has been paid by the employer to the worker in respect of any period of employment in the 12 months immediately preceding the holiday season within which an annual holiday or additional annual holiday is allowed by the employer to the worker in accordance with the provisions of this Schedule, the amount of holiday remuneration payable by the employer in respect of the said period under the provisions of paragraph 13 shall be reduced by the amount of the said accrued holiday remuneration.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

15. 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 10, one day's holiday pay in respect of the following periods of employment occurring between the end of the preceding March and the termination date—

in the case of a worker qualifying for an additional annual holiday of—4 days or more—a period of not less than 13 weeks; or 2 days—a period of not less than 26 weeks.

Provided that no worker shall be entitled to the payment by his employer of accrued holiday remuneration if he is dismissed on the grounds of misconduct in connection with his employment and is so informed by his employer at the time of dismissal.

CALCULATION OF EMPLOYMENT

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

(*b*) he has been absent throughout the week, or he has worked for the employer for less than 21 hours in either case 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 reasons shall not exceed eight in the aggregate in the period of 12 months immediately preceding the commencement of the holiday season; or

(2) as if he were employed on any day of holiday allowed under the provisions of this Schedule or of Order M.D.S. (95), and for the purposes of sub-paragraph (1) of this paragraph, a worker who is absent on such a holiday shall be treated as having worked thereon the number of hours ordinarily worked by him on that day of the week for the employer on work for which statutory minimum remuneration is payable.

OTHER HOLIDAY AGREEMENTS

17. 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

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

(1) "ASSISTANT ROUNDSWOMAN" means a worker wholly or mainly employed in assisting any person carrying out the duties normally performed by a roundswoman whether or not such person is a roundswoman as defined in this Schedule.

(2) "CHARGEHAND" means a female person (not being a forewoman) in charge of creamery workers.

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

(4) "CUSTOMARY HOLIDAY" means New Year's Day, the local Spring holiday (Monday), the local Autumn holiday (Monday), and three other days being days locally recognised as holidays.

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

(6) "FOREWOMAN" means a female person who is in immediate charge of a machine or other apparatus which is operated by five or more workers, excluding the person in charge.

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

(8) "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 15 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 15 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.

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

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 additional annual holiday or at the termination date, as the case may be, 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 42 hours,

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

(10) "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.

(11) "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.

(12) "ROUNDSWOMAN" means a worker wholly or mainly employed as a saleswoman on a definite or established route and responsible for keeping account of retail sales to customers and of any cash or tokens received in payment and who is not accompanied, save in exceptional circumstances, by any other person who exercises control or supervision.

(13) "SHOP ASSISTANT" means a person employed, wholly or mainly, in a shop as defined in sections 38 and 74 of the Shops Act 1950(a), in serving customers or in checking in and out or in both such operations.

(14) "STATUTORY MINIMUM REMUNERATION" means minimum remuneration (other than holiday remuneration) fixed by a wages regulation order.

(15) "WAGES REGULATION ORDER" means a wages regulation order made by the Secretary of State to give effect to proposals submitted to him by the Milk Distributive Wages Council (Scotland).

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

WORKERS TO WHOM THE SCHEDULE APPLIES

19.—(1) This Schedule applies to workers in relation to whom the Milk Distributive Wages Council (Scotland) operates, that is to say workers employed in Scotland in the operations in the Milk Distributive Trade specified in the Schedule to the Trade Boards (Milk Distributive Trade, Scotland) (Constitution and Proceedings) Regulations 1933(b), namely:—

(i) the wholesale and retail sale of milk;

(ii) the sale of other goods by workers mainly employed in the sale specified in (i) of this sub-paragraph;

(iii) all work incidental to the sale specified in (i) of this sub-paragraph.

(2) Work incidental to the sale specified in sub-paragraph (1)(i) of this paragraph includes, 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 sub-paragraph (1) of this paragraph.

(3) Notwithstanding the foregoing provisions of this paragraph the Milk Distributive Trade does 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;

(a) 1950 c. 28. (b) S.R. & O. 1933/1123 (Rev. XXIII, p. 484: 1933, p. 2045).

(*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 paragraph 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 19th May 1971, sets out the statutory minimum remuneration payable and the holidays to be allowed to workers in substitution for the statutory minimum remuneration fixed and the holidays provided for by the Wages Regulation (Milk Distributive) (Scotland) Order 1970 (Order M.D.S. (95)), which Order is revoked.

New provisions are printed in italics.