STATUTORY INSTRUMENTS

1965 No. 1338

WAGES COUNCILS

The Wages Regulation (Retail Bespoke Tailoring) (England and Wales) (Holidays) Order 1965

Made - - - -	*28th June* 1965
Coming into Operation	*23rd July* 1965

Whereas the Minister of Labour (hereafter in this Order referred to as " the Minister ") has received from the Retail Bespoke Tailoring 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 (Retail Bespoke Tailoring) (England and Wales) (Holidays) Order 1965.

2.—(1) In this Order the expression " the specified date " means the 23rd July 1965, 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 Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation (Holidays) Order 1953(c) shall cease to have effect.

Signed by order of the Minister of Labour 28th June 1965.

L. J. Dunnett,
Secretary,
Ministry of Labour.

(a) 7 & 8 Eliz 2. c. 69. (b) 52 & 53 Vict. c. 63. (c) S.I. 1953/1712 (1953 II, p. 2552).

SCHEDULE

The following provisions as to holidays and holiday remuneration shall be substituted for the provisions as to holidays and holiday remuneration set out in the Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation (Holidays) Order 1953(a) (Order R.B. (44)).

PART I

APPLICATION

1. This Schedule applies to every worker for whom statutory minimum remuneration has been fixed other than a worker who has more than two workers in his employment.

PART II

CUSTOMARY HOLIDAYS

2.—(1) An employer shall allow to every worker in his employment to whom this Schedule applies a holiday (hereinafter referred to as a " customary holiday ") in each year on each of the days specified in the following sub-paragraph, provided that the worker shall have been in his employment for a period of not less than eight weeks immediately preceding the customary holiday and shall have worked for the employer during the whole or part of that period.

(2) The days of customary holiday are :—

(*a*) Christmas Day (or, if Christmas Day falls on a Sunday, such week-day as may be appointed by national proclamation, or, if none is so appointed, the next following Tuesday), Boxing Day, Good Friday, Easter Monday, Whit Monday, August Bank Holiday *and one other day to be agreed between the employer and the worker;* or

(*b*) in the case of each of the said days, a day substituted by the employer therefor, being a day recognised by local custom as a day of holiday in substitution for the said day.

(3) Notwithstanding the preceding provisions of this paragraph, an employer may (except where in the case of a woman or young person such a requirement would be unlawful) require a worker who is otherwise entitled to any customary holiday under the foregoing provisions of this Schedule to work thereon and, in lieu of any such holiday on which he so works for the employer, the worker shall be entitled to be allowed a day's holiday (hereinafter referred to as a " holiday in lieu of a customary holiday ") on a week-day on which he would normally work within the period of three weeks next ensuing.

(4) A worker who is required to work on a customary holiday shall be paid :—

(*a*) for all time worked thereon the statutory minimum remuneration then appropriate to the worker for work on a customary holiday; and

(*b*) in respect of the holiday in lieu of the customary holiday, holiday remuneration in accordance with paragraph 7.

PART III

ANNUAL HOLIDAY

3.—(1) Subject to the provisions of this paragraph and of paragraph 4, in addition to the holidays specified in Part II of this Schedule, an employer shall

(a) S.I. 1953/1712 (1953 II, p. 2552).

between the date on which the provisions of this Schedule become effective and 30th September 1965, and in each succeeding year between 6th April and 30th September allow a holiday (hereinafter referred to as an "annual holiday") to every worker in his employment to whom this Schedule applies, who has been employed by him during the 12 months immediately preceding the commencement of the holiday season in that year for any of the periods of employment (calculated in accordance with the provisions of paragraph 11) set out in the appropriate column of 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:—

Workers with a normal working week of 6 days

Period of employment	Duration of annual holiday
Not less than 48 weeks	12 days
44 but less than 48 weeks	11 "
40 " " " 44 "	10 "
36 " " " 40 "	9 "
32 " " " 36 "	8 "
28 " " " 32 "	7 "
24 " " " 28 "	6 "
20 " " " 24 "	5 "
16 " " " 20 "	4 "
12 " " " 16 "	3 "
8 " " " 12 "	2 "
4 " " " 8 "	1 day

Workers with a normal working week of 5 days or less

Period of employment	Duration of annual holiday
Not less than 48 weeks	10 days
43 but less than 48 weeks	9 "
38 " " " 43 "	8 "
33 " " " 38 "	7 "
28 " " " 33 "	6 "
24 " " " 28 "	5 "
19 " " " 24 "	4 "
14 " " " 19 "	3 "
9 " " " 14 "	2 "
4 " " " 9 "	1 day

(2) Notwithstanding the provisions of the last foregoing sub-paragraph, the number of days of annual holiday which an employer is required to allow to a worker in any holiday season shall not exceed in the aggregate twice the number of days constituting the worker's normal working week.

(3) The duration of the worker's annual holiday in the holiday season in 1965 shall be reduced by any days of annual holiday duly allowed to him by the employer under the provisions of Order R.B. (44) between 6th April 1965 and the date on which the provisions of this Schedule become effective.

(4) In this Schedule the expression "holiday season" means in relation to an annual holiday during the year 1965 the period commencing on 6th April 1965 and ending on 30th September 1965, and in relation to each subsequent year, the period commencing on 6th April and ending on 30th September in that year.

4.—(1) Except as hereafter in this paragraph otherwise provided, an annual holiday shall be allowed on consecutive working days, being days on which the worker is normally called upon to work for the employer.

(2) Where the number of days of annual holiday for which a worker has qualified exceeds the number of days constituting his normal working week, the holiday may be allowed in two periods of consecutive working days; so however that when a holiday is so allowed, one of the periods shall consist of a number of such days not less than the number of days constituting the worker's normal working week.

(3) For the purposes of this paragraph, days of annual holiday shall be treated as consecutive notwithstanding that a day of holiday allowed to a worker under Part II of this Schedule or a day upon which he does not normally work for the employer intervenes.

(4) Where an annual holiday is allowed in two periods in accordance with sub-paragraph (2) of this paragraph, then notwithstanding paragraph 3, the period which is not required by virtue of sub-paragraph (2) of this paragraph to consist of a number of days not less than the number of days constituting the worker's normal working week may be allowed either in the holiday season or, where before 23rd September in any holiday season a worker and his employer so agree in writing, after the end of the holiday season but before 1st January next following.

(5) Where a day of holiday allowed to a worker under Part II of this Schedule immediately precedes a period of annual holiday or occurs during such a period and the total number of days of annual holiday required to be allowed in the period under the foregoing provisions of this paragraph, together with any such day of holiday allowed under Part II of this Schedule, exceeds the number of days constituting the worker's normal working week then, notwithstanding the foregoing provisions of this paragraph, the duration of that period of annual holiday may be reduced by one day and in such a case one day of annual holiday may be allowed on any working day (not being the worker's weekly short day) in the holiday season (or before 1st January next following the end of the holiday season where the period of annual holiday is allowed in accordance with sub-paragraph (4) of this paragraph).

(6) Subject to the provisions of sub-paragraph (1) of this paragraph, any day of annual holiday under this Schedule may be allowed on a day on which the worker is entitled to a day of holiday or to a half-holiday under any enactment other than the Wages Councils Act 1959.

5. An employer shall give to a worker, other than an outworker, reasonable notice of the commencing date or dates and of the duration of the period or periods of his annual holiday. Such notice may be given individually to the worker or by the posting of a notice in the place where the worker is employed.

6.—(1) An outworker shall give to the employer at least fourteen days' notice of the date in the holiday season on which he proposes to commence the annual holiday for which he has qualified under this Schedule, and the holiday shall be allowed by the employer as from that date or, subject to the provisions of paragraphs 3 and 4, from such other date or dates and for such periods as may be substituted therefor by agreement between the employer and the outworker.

(2) Where no notice has been given or agreement made in accordance with sub-paragraph (1) of this paragraph, the employer shall allow the outworker the annual holiday for which he has qualified in the last two weeks of the holiday season.

PART IV

HOLIDAY REMUNERATION

CUSTOMARY HOLIDAYS AND HOLIDAYS IN LIEU OF CUSTOMARY HOLIDAYS

7.—(1) For each day of holiday to which a worker is entitled under Part II of this Schedule he shall be paid by the employer as holiday remuneration one-fifth of the average weekly net earnings of the worker during the eight weeks immediately preceding the holiday, such average weekly net earnings to be determined by dividing, by the number of weeks during the whole or part of which the worker has worked for the employer during the said period, the worker's total net earnings in respect of those weeks.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, payment of the said holiday remuneration is subject to the condition that the worker (unless excused by the employer or absent by reason of the proved illness of, or accident to, the worker) presents himself for employment at the usual starting hour on the first working day following the holiday:

Provided that when two customary holidays occur on successive days (or so that no working day intervenes) the said condition shall apply only to the second customary holiday.

(3) Where a worker normally works in the week on every week-day except Saturday, he shall be paid in respect of any Saturday on which he would have been entitled to a holiday under Part II of this Schedule if it had been a day on which he normally worked, a sum equivalent to the holiday remuneration he would have been entitled to receive had he been allowed a holiday on that day.

(4) Holiday remuneration in respect of any customary holiday shall be paid by the employer to the worker on the pay-day on which the wages for the first working day following the customary holiday are paid.

(5) Holiday remuneration in respect of any holiday in lieu of a customary holiday shall be paid on the pay-day on which the wages are paid for the first working day following the holiday in lieu of a customary holiday:

Provided that the said payment shall be made immediately upon the termination of the worker's employment if he ceases to be employed before being allowed such holiday in lieu of a customary holiday and in that case the condition specified in sub-paragraph (2) of this paragraph shall not apply.

ANNUAL HOLIDAY

8.—(1) Subject to the provisions of paragraph 9, a worker qualified to be allowed an annual holiday under this Schedule shall be paid as holiday remuneration by his employer in respect thereof, on the last pay-day preceding such annual holiday, an amount equal to four per cent. of the total net earnings of the worker during the 12 months immediately preceding the commencement of the holiday season.

(2) Where, under the provisions of paragraph 4, an annual holiday is allowed in more than one period the holiday remuneration shall be apportioned accordingly.

9. Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with paragraph 10 of this Schedule or under the provisions of Order R.B. (44)) in respect of employment during any of the periods referred to in that paragraph or that Order, the amount of holiday remuneration payable by the employer in respect of any annual holiday for which the worker has qualified by reason of employment during the said period shall be reduced by the amount of the said accrued holiday remuneration unless that remuneration has been deducted from a previous

payment of holiday remuneration made under the provisions of this Schedule or of Order R.B. (44).

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

10.—(1) Where a worker ceases to be employed by an employer after the provisions of this Schedule become effective the employer shall, immediately on the termination of the employment, pay to the worker as accrued holiday remuneration :—

(*a*) in respect of employment in the 12 months up to and including the preceding 5th April, a sum equal to the holiday remuneration which would be payable 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) if they were allowed at the time of leaving the employment ; and

(*b*) in respect of any employment since the said 5th April, a sum equal to four per cent. of the total net earnings of the worker since that date.

(2) Where an employer has ceased for a continuous period of one calendar month to give out work to an outworker before that worker has become entitled to be allowed an annual holiday or before he has been allowed the whole of any annual holiday for which he has qualified under this Schedule the day on which the said calendar month expires shall be treated for the purposes of this Schedule as the day on which the outworker's employment with the employer is terminated.

PART V

GENERAL

11.—(1) For the purpose of calculating any period of employment qualifying a worker, other than an outworker, 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 24 hours and has performed some work for which statutory minimum remuneration is payable ;

(ii) he has worked for the employer for less than 24 hours by reason of the proved illness of, or accident to, the worker or for a like reason has been absent throughout the week : Provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed eight in the aggregate in any such period ; or

(iii) he has been suspended throughout the week owing to shortage of work : Provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed six in the aggregate in any such period ;

(*b*) as if he were employed on any day of holiday allowed under the provisions of this Schedule, or of Order R.B. (44), and for the purposes of the provisions of (*a*) of this sub-paragraph, a worker who is absent on such a holiday shall be treated as having worked thereon for the employer on work for which statutory minimum remuneration is payable for the number of hours ordinarily worked by him on that day of the week.

(2) For the purpose of calculating any period of employment qualifying an outworker for an annual holiday or for any accrued holiday remuneration under this Schedule, the worker shall be treated as if he were employed for a week

in respect of any week in which he has worked for the employer and has performed some work for which statutory minimum remuneration is payable.

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

"NET EARNINGS" means the remuneration paid or payable by the employer to the worker less any necessary expenditure incurred by the worker in connection with his employment and for the purposes of this definition—

(1) "remuneration" does not include any payment made by the employer to the worker in respect of holidays; and

(2) "necessary expenditure" includes the cost of seat room, light and heat, as well as of sewings and other materials provided by the worker.

"NORMAL WORKING WEEK" means the number of days on which it has been usual for the worker to work in a week in the employment of the employer in the 12 months immediately preceding the commencement of the holiday season :

Provided that—

(i) part of 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.

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

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

"WEEK" means "pay week".

13. The provisions of this Schedule are without prejudice to any agreement for the allowance of any further holidays with pay or for the payment of additional holiday remuneration.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which has effect from the 23rd July 1965, sets out the holidays which an employer is required to allow to workers and the remuneration payable for those holidays, in substitution for the holidays and holiday remuneration fixed by the Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation (Holidays) Order 1953 (Order R.B. (44)), which is revoked.

New provisions are printed in italics.