STATUTORY INSTRUMENTS

1968 No. 1358

WAGES COUNCILS

The Wages Regulation (Sack and Bag) (Holidays) Order 1968

Made - - - 22*nd August* 1968

Coming into Operation 16*th September* 1968

Whereas the Secretary of State has received from the Sack and Bag Wages Council (Great Britain) (hereinafter referred to as "the Wages Council") the wages regulation proposals set out in the Schedule hereto;

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

1. This Order may be cited as the Wages Regulation (Sack and Bag) (Holidays) Order 1968.

2.—(1) In this Order the expression "the specified date" means the 16th September 1968, 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 (Sack and Bag) (Holidays) Order 1963(c), shall cease to have effect.

Signed by Order of the Secretary of State.

22nd August 1968.

C. J. Maston,
Assistant Under Secretary of State,
Department of Employment and Productivity.

SCHEDULE

The following provisions as to holidays and holiday remuneration shall be substituted for the provisions as to holidays and holiday remuneration set out in the Wages Regulation (Sack and Bag) (Holidays) Order 1963 (hereinafter referred to as "Order S.B. (57)") as amended by Schedule 2 to the Wages Regulation (Sack and Bag) Order 1967(d) (Order S.B. (63)).

(a) 1959 c. 69.
(b) 1889 c. 63.
(c) S.I. 1963/2040 (1963 III, p. 4287).
(d) S.I. 1967/639 (1967 I, p. 1917).

PART I

APPLICATION

1.—(1) This Schedule applies to every worker (other than an outworker) for whom statutory minimum remuneration has been fixed.

(2) For the purposes of this Schedule an outworker is a worker who works in his own home or in some other place not under the control or management of the employer.

PART II

CUSTOMARY HOLIDAYS

2.—(1) An employer shall allow to every worker to whom this Schedule applies a holiday (hereinafter referred to as a "customary holiday") in each year on the days specified in the following sub-paragraph, provided that the worker was in his employment and (unless excused by the employer or absent by reason of the proved illness of, or accident to, the worker) has worked for the employer throughout the last working day on which work was available to him prior to the customary holiday.

(2) The said customary holidays are:—

(*a*) (i) In England and Wales—

Christmas Day (or, if Christmas Day falls on a Sunday, such weekday 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 (or where another day is substituted therefor by national proclamation, that day), and August Bank Holiday;

(ii) In Scotland—

New Year's Day and the following day:

Provided that if New Year's Day falls on a Sunday the holidays shall be the following Monday and Tuesday, and if New Year's Day falls on a Saturday the holidays shall be New Year's Day and the following Monday;

the local Spring holiday;

the local Autumn holiday; and

two other days (being days on which the worker would normally work) in the course of a calendar year to be fixed by the employer and notified to the worker not less than three weeks before the holiday;

or (*b*) in the case of each of the said days (other than a day fixed by the employer in Scotland and notified to the worker as aforesaid) such weekday as may be substituted therefor by the employer being either—

(i) a day which is by local custom recognised as a day of holiday, or

(ii) a day (being a day on which the worker would normally work) which falls within three weeks of the day for which it is substituted and is mutually agreed between the employer and the worker.

(3) Notwithstanding the preceding provisions of this paragraph, where by reason of the circumstances in which the work is carried on in an establishment the allowing of the customary holiday is rendered impracticable, a worker may be required to work on a customary holiday (except where in the case of a woman or young person such a requirement would be unlawful) and, if so required, shall be paid for all time worked thereon the statutory minimum remuneration appropriate to him for work on a customary holiday.

PART III

ANNUAL HOLIDAY

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

(*a*) between the date on which this Schedule becomes effective and 30th September 1968, allow a holiday (hereinafter referred to as an "annual holiday") to every worker in his employment to whom this Schedule applies who has been employed by him during the 12 months immediately preceding the commencement of the holiday season for any of the periods of employment (calculated in accordance with the provisions of paragraph 10) set out in the table below and the duration of the annual holiday shall, in the case of each such worker, be related to his period of employment during that 12 months as follows:—

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

(*b*) between 6th April 1969 and 30th September 1969, and in each succeeding year between 6th April and 30th September allow a holiday (hereinafter referred to as an "annual holiday") to every worker in his employment to whom this Schedule applies who has been employed by him during the 12 months immediately preceding the commencement of the holiday season for any of the periods of employment (calculated in accordance with the provisions of paragraph 10) set out in the table below and the duration of the annual holiday shall, in the case of each such worker, be related to his period of employment during that 12 months as follows:—

Workers with a normal working week of 6 days		Workers with a normal working week of 5 days or less	
Period of employment	Duration of annual holiday	Period of employment	Duration of annual holiday
At least 48 weeks	*13 days*	*At least 48 weeks .. ..*	*11 days*
" " *44* "	*12* "	" " *44* "	*10* "
" " *40* "	*11* "	" " *40* "	*9* "
" " *36* "	*10* "	" " *35* "	*8* "
" " *33* "	*9* "	" " *31* "	*7* "
" " *29* "	*8* "	" " *27* "	*6* "
" " *26* "	*7* "	" " *22* "	*5* "
" " *22* "	*6* "	" " *18* "	*4* "
" " *19* "	*5* "	" " *14* "	*3* "
" " *15* "	*4* "	" " *9* "	*2* "
" " *12* "	*3* "		
" " *8* "	*2* "		

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

(*a*) (i) the number of days of annual holiday which an employer is required to allow to a worker in the holiday season 6th April 1968 to 30th September 1968 shall not exceed in the aggregate twice the number of days constituting the worker's normal working week;

(ii) the number of days of annual holiday which an employer is required to allow to a worker in the holiday season 6th April 1969 to 30th September 1969 and in each succeeding year between 6th April and 30th September shall not exceed in the aggregate twice the number of days constituting the worker's normal working week, *plus one day;*

(*b*) the duration of the worker's annual holiday in the holiday season ending on 30th September 1968 shall be reduced by any days of annual holiday allowed to him by the employer under the provisions of Order S.B. (57) between 6th April 1968 and the date on which the provisions of this Schedule become effective.

(3) In this Schedule the expression "holiday season" means in relation to the year 1968 the period commencing on 6th April 1968 and ending on 30th September 1968, and, in each succeeding year, the period commencing on 6th April and ending on 30th September of the same year.

4.—(1) Subject to the provisions of this paragraph, an annual holiday shall be allowed on consecutive working days, being days on which the worker is normally called upon to work for the employer.

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

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

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

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

5. An employer shall give to a worker reasonable notice of the commencing date or dates and duration of the period or periods of his annual holiday. Such notice shall be given at least 21 days before the first day of the annual holiday or before the first day of each period of annual holiday, as the case may be, and may be given individually to the worker or by the posting of a notice in the place where the worker is employed.

PART IV

HOLIDAY REMUNERATION

A.—CUSTOMARY HOLIDAYS

6.—(1) Subject to the provisions of this paragraph, for each day of holiday to which a worker is entitled under Part II of this Schedule he shall be paid by the employer as holiday remuneration whichever of the following sums is the greater, that is to say either:—

(*a*) a sum equal to the worker's average hourly earnings for the hours worked by him for the employer in the week immediately preceding that in which the holiday occurs; or

(*b*) a sum equal to the hourly general minimum time rate (being statutory minimum remuneration) which is applicable to the worker (or which would be applicable to him if he were a time worker);

multiplied in either case by the number of hours (exclusive of overtime) normally worked by him for the employer on that day of the week.

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

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

B.—ANNUAL HOLIDAY

7.—(1) Subject to the provisions of this paragraph and of paragraph 8, a worker qualified to be allowed an annual holiday under this Schedule shall be paid as holiday remuneration by his employer in respect thereof, on the last pay day preceding such annual holiday:—

(*a*) in respect of the annual holiday to be allowed during the holiday season commencing on 6th April 1968 an amount equal to 4 per cent. of the total remuneration paid by the employer to the worker during the 12 months immediately preceding the commencement of the holiday season;

(*b*) in respect of the annual holiday to be allowed during the holiday season commencing on 6th April 1969 and during the holiday season in each succeeding year an amount equal to *4.4 per cent.* of the total remuneration paid by the employer to the worker during the 12 months immediately preceding the commencement of the holiday season.

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

8. Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with paragraph 9 of this Schedule or with Order S.B. (57), as amended) 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 S.B. (57), as amended.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

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

(1) in respect of employment in the 12 months up to and including 5th April immediately preceding the termination date, a sum equal to the holiday remuneration for any days of annual holiday for which he has qualified except days of annual holiday which he has been allowed or has become entitled to be allowed before leaving the employment; and

(2) in respect of any employment since 5th April immediately preceding the termination date, an amount equal to *4.4 per cent.* of the total remuneration paid by the employer to the worker since that date:

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 industrial misconduct and is so informed by the employer at the time of dismissal.

PART V

GENERAL

10. For the purpose of calculating any period of employment qualifying a worker for an annual holiday under this Schedule, the worker shall be treated—

(1) as if he were employed for a week in respect of any week in which—

(*a*) in the case of a worker other than a part-time worker, he has worked for the employer for not less than 24 hours and has performed some work for which statutory minimum remuneration is payable;

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

(*c*) (i) in the case of a worker other than a part-time worker, he has worked for the employer for less than 24 hours by reason of the proved illness of, or accident to, the worker or, in the case of any worker, for a like reason he has been absent throughout the week:

Provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed four in the aggregate in any such period; or

(ii) in the case of any worker, he has been suspended throughout the week owing to shortage of work:

Provided that the number of weeks which may be treated as weeks of employment for such reason shall not exceed four in the aggregate in any such period:

(2) as if he were employed on any day of holiday allowed under the provisions of this Schedule, or of Order S.B. (57), as amended, and for the purposes of the provisions of sub-paragraph (1) of this paragraph, a worker who is absent on any such holiday shall be treated as having worked thereon for the employer on work for which statutory minimum remuneration is payable for the number of hours normally worked by him on that day of the week.

DEFINITIONS

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

"AVERAGE HOURLY EARNINGS" means the total remuneration paid by the employer to the worker in the week preceding the holiday divided by the number of hours (including overtime) worked for the employer in that week:

Provided that where a worker has been allowed any day as holiday in that week he shall be deemed to have worked thereon for the number of hours normally worked by him on that day of the week.

"NORMAL WORKING WEEK" means the number of days on which it has been usual for the worker to work in a week in the employment of the employer in the 12 months immediately preceding the commencement of the holiday season, or, where under paragraph 9 accrued holiday remuneration is payable on the termination of the employment, in the 12 months immediately preceding the termination date:

Provided that—

(1) part of a day shall count as a day;

(2) no account shall be taken of any week in which the worker did not perform any work for which statutory minimum remuneration has been fixed.

"PART-TIME WORKER" means a worker who normally works for the employer for less than 24 hours a week by reason only of the fact that he does not hold himself out as normally available for work for more than the number of hours he normally works in the week.

"STATUTORY MINIMUM REMUNERATION" means minimum remuneration (other than holiday remuneration) fixed by a wages regulation order made by the Secretary of State to give effect to proposals submitted to her by the Wages Council.

"TOTAL REMUNERATION" means any payments paid or payable to the worker under his contract of employment, for time worked or piece work done by him, holiday remuneration, any productivity, long service or other bonus payable to the worker on a weekly, fortnightly or monthly basis and merit payments so payable but does not include any other payments.

"WEEK" means "pay week".

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

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which has effect from 16th September 1968, sets out the holidays which an employer is required to allow to workers and the remuneration payable for those holidays in substitution for the holidays and holiday remuneration set out in the Wages Regulation (Sack and Bag) (Holidays) Order 1963 (Order S.B. (57)), as amended by Schedule 2 to the Wages Regulation (Sack and Bag) Order 1967 (Order S.B. 63)). Order S.B. (57) is revoked.

New provisions are printed in italics.