

# **STATES OF JERSEY**



## **DRAFT EMPLOYMENT (MINIMUM WAGE) (JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 6th July 2004  
by the Employment and Social Security Committee**

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**STATES GREFFE**





Jersey

# **DRAFT EMPLOYMENT (MINIMUM WAGE) (JERSEY) REGULATIONS 200**

## **REPORT**

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### **Introduction**

Regulations are required under Part 4 of the Employment (Jersey) Law 2003 for the purpose of bringing the minimum wage into effect. The Regulations are necessarily detailed because of the many different ways in which people are paid. They are designed to ensure that the ability to offset cost against wage is limited to food and living accommodation, and that the calculation of wages ensures that the individual receives the correct minimum wage.

### **Background**

Part 4 of the Employment Law allows Regulations to be made specifying permissible offsets against the minimum wage and requires that all workers in Jersey are paid at an hourly rate which is equal to or greater than the minimum wage.

Detailed mechanisms may be provided under Part 4 for calculating whether the minimum wage has been satisfied. The standard pay of employees will be used to ascertain whether the minimum wage has been satisfied; overtime and shift pay do not count.

Part 4 also enables enforcement notices and fines to be served on employers for failure to comply with minimum wage legislation, complaints to be made through an Employment Tribunal, and remuneration owed and compensation to be paid to employees.

Following widespread consultation on the rules governing minimum wage, the Employment Forum made its recommendations on each of the Regulations, a summary of which is included at Annexe A of the Report and Proposition on the draft Employment (Minimum Wage) (Jersey) Order 200- (P.130/2004).

## **THE MINIMUM WAGE REGULATIONS**

### **Calculation of Hourly Rate**

Regulations at Article 17, specify the method of calculating an employee's hourly rate, for the purpose of comparing it with the minimum hourly wage rate, which is summarised below:

- Calculate minimum wage pay for the pay reference period by checking gross pay and making deductions for anything that does not count towards minimum wage pay and adding the offset if applicable (accommodation, or accommodation and food).
- Calculate the hours for which the minimum wage must be paid in the pay reference period.
- Divide the first figure by the second figure to obtain the worker's hourly rate of pay for comparison with the minimum wage.
- Compare the worker's hourly rate with the appropriate minimum wage rate, i.e. full rate, trainee rate or youth rate.

This calculation is used to determine whether the employee has received the minimum wage during that period. The figures are gross and do not take account of any of the employee's other liabilities, such as for taxes or social

insurance.

### **Formula to determine whether the minimum wage has been paid**

In accordance with article 6, the following formula should be used to determine whether the minimum wage has been paid for the relevant pay reference period –

$$(A - B) \div C = D$$

Where;

**A** is the total remuneration paid to the employee (Regulation 7)

**B** is the total of the deductions that may be made (Regulation 8)

**C** is the number of hours worked in the relevant pay reference period (Regulation 5)

**D** is the hourly rate, which should be equal to or higher than the relevant minimum wage hourly rate for the employee.

### **Offsets**

The Forum recommended that only two benefits in kind may be offset against the minimum wage; either the provision of food and accommodation, or the provision of accommodation alone. The Committee noted that this was strongly supported by the two key industries affected, namely Agriculture and Tourism.

During the final stage of the consultation it was suggested that there should be a definition of food in the legislation and the Committee agreed to reconsider the inclusion of an offset for food. The Committee was aware of potential difficulties in providing a suitable definition, which might lead to problems in regulating and enforcing the provision of adequate food.

Having considered further evidence from the Jersey Hospitality Association and the Forum, the Committee decided that a simple definition should be included in the regulations; three adequate meals per day. The Committee intends, subject to States agreement, that the Forum monitors the provision of food and reports to the Committee specifically on this issue a year after the implementation of the minimum wage.

Therefore, the Regulations specify the two benefits in kind and the maximum value that may be attributed to them for the purpose of establishing whether the minimum wage has been paid:

- For the provision of accommodation to the employee, the maximum weekly offset against the minimum wage is £55.65.
- For the provision of both accommodation and food to the employee, the maximum weekly offset against the minimum wage is £74.20.

### **Acknowledgement**

The Committee is grateful to the Employment Forum for their contribution to the preparation of subordinate legislation for the minimum wage and to those who participated in the consultation process.

It was through this process that local pay practices were identified and the complexities addressed in the Regulations to ensure that the system can work in practice without undue administrative burden on employers.

In order to support employers to implement the new minimum wage system, the Committee will provide practical guidelines. Training and advice will also be available through the Jersey Advisory and Conciliation Service (JACS).

### **Financial/manpower implications**

Funding for the infrastructure of the minimum wage has already been allocated and is partly in place through the establishment of the Jersey Advisory and Conciliation Service, and an Employment Tribunal which is shortly to be set up to determine on the whole of the employment legislation.

The wider implications of the introduction of a minimum wage will depend upon the individual sector, but advice and consultation has suggested that the proposals are affordable and manageable for local businesses and therefore the economic impact should be negligible. This was also the experience of the U.K. when their National Minimum Wage was introduced.

## Explanatory Note

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These Regulations would provide for the way in which the hourly rate of the minimum wage, under the Employment (Jersey) Law 2003 would be determined. The actual amount of the hourly rate would then fall to be calculated accordingly and prescribed by the Employment and Social Security Committee, by Order.

The States will be invited to bring the relevant parts of the Law, and the Regulations, into force on 1st April 2005, and the Committee would then be asked to make the Order so as to come into force at the same time.

*Regulation 1* defines expressions used in the Regulations.

*Regulation 2* explains what is meant by a “payment” by an employer to an employee.

*Regulation 3* provides that the only benefits in kind that may be treated by an employer as payment to an employee are meals and living accommodation.

*Regulation 4* provides that different minimum wages may be prescribed for trainees and for persons who are under 18 years than for other persons who are entitled to a minimum wage.

*Regulation 5* has the effect of providing that the hours worked by an employee in a given pay reference period are to be taken in total.

*Regulation 6* explains how to determine whether the employee has received the minimum wage during that period. This is to be done by deducting from the employee’s total remuneration during that period the total amounts to which Regulation 8(1) refers, and then dividing the result by the total hours worked in the period.

*Regulation 7* explains how the total remuneration during the period is to be ascertained.

*Regulation 8* specifies payments, deductions and other amounts that must not be treated as part of an employee’s earnings when calculating whether the minimum wage has been paid. These will include premiums for overtime and shift work.

*Regulation 9* has the effect of providing that an employer who provides 3 adequate meals per day and living accommodation is entitled to an offset at the rate of £74.20 per week against the minimum wage, and that one who provides living accommodation only is entitled to an offset at the rate of £55.65 per week.

*Regulation 10* specifies how the Regulations may be cited. It also provides for them to come into force on the same day as Article 17 of the Employment (Jersey) Law 2003.





Jersey

# DRAFT EMPLOYMENT (MINIMUM WAGE) (JERSEY) REGULATIONS 200

## Arrangement

### Regulation

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<u>1</u>	<u>Interpretation</u>
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<u>3</u>	<u>Benefits in kind that count as payments</u>
<u>4</u>	<u>Employees who may be treated as qualifying for the minimum wage at a different rate</u>
<u>5</u>	<u>Calculation of hours worked in a pay reference period</u>
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Jersey

# DRAFT EMPLOYMENT (MINIMUM WAGE) (JERSEY) REGULATIONS 200

*Made*

*[date to be inserted]*

*Coming into force*

*1st April 2005*

**THE STATES**, in pursuance of Articles 17, 18 and 104 of the Employment (Jersey) Law 2003<sup>[1]</sup> have made the following Regulations –

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## **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“accredited training” means training that is approved in writing by the Employment and Social Security Committee as accredited training for the purposes of these Regulations;

“allowance”, except in Regulation 2(b), means any payment paid by the employer to an employee attributable to a particular aspect of his or her working arrangements or to his or her working or personal circumstances that is not consolidated into the employee’s standard pay, but does not mean an allowance designed to refund an employee in respect of expenses incurred by the employee in connection with his or her employment;

“employee” means an employee who has ceased to be of compulsory school age;

“food and living accommodation”, when used in relation to an employee, means 3 adequate meals that are available on each day on which he or she is employed and living accommodation;

“living accommodation” when used in relation to an employee, means living accommodation that is available to the employee from midnight to midnight on each day on which he or she is employed;

“standard pay” –

- (a) if an employee has normal working hours, means the payment that he or she is entitled to receive by way of remuneration for his or her services during the employee’s normal working hours; and
- (b) if an employee does not have normal working hours, means the payment that he or she is entitled to receive by way of remuneration for his or her services;

“the total remuneration” means the total remuneration calculated in accordance with Regulation 7;

“trainee” means an employee of any age who, by written agreement with his or her employer, is undergoing accredited training during the first year of his or her employment by that employer in the particular job for which the employee is being trained.

## **2 Meaning of “payments”**

- (1) References in these Regulations to payments paid by the employer to the employee are references to payments paid by the employer to the employee in the latter’s capacity as an employee before any

deductions are made.

- (2) However, they are not references to –
  - (a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages;
  - (b) any payment by way of a pension, by way of an allowance or gratuity in connection with the employee's retirement or as compensation for loss of office;
  - (c) any payment of an award made by a court or tribunal or to settle proceedings which have been or might be brought before a court or tribunal, other than the payment of an amount due under the employee's contract;
  - (d) any payment referable to the employee's redundancy; or
  - (e) any payment by way of an award under a suggestions scheme.

### **3 Benefits in kind that count as payments**

- (1) The only benefits in kind provided by an employer to an employee that shall be treated for the purposes of these Regulations as payments by the employer to the employee are –
  - (a) food; and
  - (b) living accommodation.
- (2) It is immaterial for the purpose of paragraph (1) that any money value is attached to a benefit in kind that does not comprise either food or living accommodation.

### **4 Employees who may be treated as qualifying for the minimum wage at a different rate**

An Order made for the purpose of Article 16(3) of the Employment (Jersey) Law 2003<sup>[2]</sup> may prescribe minimum wages for –

- (a) trainees; or
- (b) employees who have not attained the age of 18 years,

at different hourly rates than those that apply to other employees who qualify for the minimum wage.

### **5 Calculation of hours worked in a pay reference period**

The hours worked by an employee in a pay reference period shall be the total number of hours worked by him or her during that period.

### **6 How to determine whether the minimum wage has been paid**

- (1) The hourly rate paid to an employee in a pay reference period shall be determined by dividing the total amount calculated in accordance with paragraph (2) by the number of hours specified in paragraph (3).
- (2) The total amount to which paragraph (1) refers is **A** minus **B**, where –
  - (a) “**A**” is the total remuneration calculated under Regulation 7; and
  - (b) “**B**” is the total of the payments, deductions and other amounts specified in Regulation 8(1).
- (3) The hours to which paragraph (1) refers are the number of hours worked by the employee in the pay reference period that have been ascertained in accordance with Regulation 5.

### **7 Payments by the employer that are to be taken into account**

- (1) The total remuneration in a pay reference period shall be calculated by adding together –
  - (a) all payments paid by the employer to the employee in the pay reference period;
  - (b) all payments paid by the employer to the employee in the following pay reference period, in respect of the pay reference period to which paragraph (a) refers (whether in respect of work or not);
  - (c) all payments paid by the employer to the employee later than the end of that following pay reference period, in respect of work done in the pay reference period to which paragraph (a) refers, being work specified in paragraph (2); and
  - (d) where the employer has during the pay reference period provided the employee either with food and living accommodation or with living accommodation, but in respect of that provision is not entitled to make any deduction from the wages of the employee and is not entitled to receive any payment from him or her, the amount determined in accordance with Regulation 9.
- (2) The work to which paragraph (1)(c) refers is work in respect of which –
  - (a) the employee is under an obligation to complete a record of the amount of work done;
  - (b) the employee is not entitled to payment until the completed record has been submitted by him or her to the employer; and
  - (c) the employee has failed to submit a record before the fourth working day before the end of that following pay reference period,and in respect of which the payment is paid in either the pay reference period in which the record is submitted to the employer or in the pay reference period following that.

## **8 Things that must not be taken into account**

- (1) The payments, deductions and other amounts to which this paragraph refers are –
  - (a) all payments paid by the employer to the employee in the pay reference period that, by virtue of paragraph (1)(b) or paragraph (1)(c) of Regulation 7, are to be included in the total of remuneration for an earlier pay reference period;
  - (b) all payments paid by the employer to the employee in respect of periods when the employee was absent from work or engaged in taking industrial action;
  - (c) all payments paid by the employer to the employee by way of an allowance other than an allowance attributable to the performance of the employee in carrying out his or her work;
  - (d) all payments paid by the employer to the employee representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge that is not paid through the payroll;
  - (e) all deductions in respect of the employee's expenditure in connection with his or her employment;
  - (f) all deductions that are made by the employer for his or her own use and benefit (and accordingly not attributable to any amount paid or payable by the employer to any other person on behalf of the employee), except deductions specified in paragraph (3); and
  - (g) the amount of all deductions that the employer is entitled to make or payments that he or she is entitled to receive from the employee, in respect of the provision by the employer to the employee in the pay reference period either of food and living accommodation or of living accommodation.
- (2) However –
  - (a) the amount to which paragraph (1)(g) refers shall be taken into account only to the extent that it exceeds the amount determined in accordance with Regulation 9; and
  - (b) to the extent that any payment or deduction is required to be subtracted from the total of remuneration by virtue of more than one sub-paragraph of paragraph (1), it shall be subtracted only once.

- (3) The deductions to which this paragraph refers (which are deductions to which paragraph (1)(f) does not apply) are –
  - (a) any deduction in respect of conduct of the employee, or any other event, in respect of which he or she is contractually liable (whether together with any other employees or not);
  - (b) any deduction on account of an advance under an agreement for a loan or an advance of wages;
  - (c) any deduction made to recover an accidental overpayment of wages made to the employee; and
  - (d) any deduction in respect of the purchase by the employee of any share, other security or share option, or of any share in a partnership.

**9 Limits on amounts that may be taken into account for provision of food and living accommodation**

- (1) Where the employer provides food and living accommodation, the amount to which Regulations 7(1)(d) and 8(1)(g) refer is £74.20 per week or £10.60 per day.
- (2) Where the employer provides living accommodation but does not provide food, the amount to which Regulations 7(1)(d) and 8(1)(g) refer is £55.65 per week or £7.95 per day.

**10 Citation and commencement**

- (1) These Regulations may be cited as the Employment (Minimum Wage) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on the same day as Article 17 of the Employment (Jersey) Law 2003.

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[1] *Recueil des Lois, Volume 2003, pages 498, 500 and 546.*

[2] *Recueil des Lois, Volume 2003, page 498.*