

**MINIMUM WAGE LEGISLATION**

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**Lodged au Greffe on 10th November 1998  
by the Employment and Social Security Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

250

1998

P.227

Price code : C

## PROPOSITION

### **THE STATES are asked to decide if they are of opinion -**

- (a) to receive the report of the Employment and Social Security Committee dated 1st October 1998 and to approve the introduction of legislation to provide for -
  - (i) a minimum wage at such single hourly rate as the States may from time to time prescribe by Regulations;
  - (ii) a trainee wage, at such rate as the States may from time to time prescribe by Regulations, to be paid to individuals who are undergoing a training programme approved by the Employment and Social Security Committee after consultation with relevant parties;
  - (iii) individuals to have the opportunity to ensure compliance with the minimum wage through a Jersey Advisory and Conciliation Service and an Employment Tribunal established under a new Employment Law;
  - (iv) for the establishment of an independent body to advise the Committee on matters relating to the provision of a minimum wage, including the provision of a mechanism for uprating the amount of the wage;
- (b) to agree that the minimum wage would be introduced with effect from 1st January 2000, subject to the necessary resources being made available as detailed in the said report;
- (c) to request the Policy and Resources Committee to assess the proposed legislation for inclusion in the States Legislation Programme 1999 to 2001 in the manner described in Part 6 of the States Resource Plan 1998;

- (d) to request the Finance and Economics and Establishment Committees to provide the Committee with sufficient resources to implement these measures as detailed in the said report.

## EMPLOYMENT AND SOCIAL SECURITY COMMITTEE

- NOTES:
1. The Finance and Economics Committee cannot support this Proposition at this stage, due to the fact that the required level of financial information on which its decision would be based has not been made available. The Committee believes that consideration of this Report and Proposition should be deferred until it has had time to consider its financial implications.
  2. The Establishment Committee agreed that no additional staffing would be made available unless there were compensatory savings made elsewhere in the public service.

## Report

1. This report has been prepared after considerable debate and discussion on minimum wage over many years. It outlines the past and recent history and puts forward proposals which seek to resolve the conflicting demands of introducing a minimum wage that supports a competitive economy but makes a difference to the low-paid. This report also outlines the Committee's approach, through flexible enabling legislation, allowing detailed subordinate legislation to describe key factors of a minimum wage system.
2. **History**
  - 2.1 The Employment and Social Security Committee took responsibility for minimum wage when the functions of the previous Industrial Relations Committee were transferred in December 1996 (P.241/96). The issue had originally been lodged by Senator Shenton in March 1993, although at that time the Finance and Economics Committee had presented a report (P.199/93) stating that "the case for a statutory minimum wage (was) not proven". The then Industrial Relations Committee, however, had continued to discuss the issue and, feeling that it had enough evidence to take over responsibility for the principle of the issue, presented its own report and proposition (P.154/96) to the States in October 1996. Comments to this were received from the Finance and Economics Committee (P.170/96) and from the Policy and Resources and Employment and Social Security Committees (P.219/96). These led to an amended proposition (P.225/96) being lodged by Deputy Dorey and, as the then Industrial Relations Committee felt that it was inappropriate to debate such an issue at the final States' sitting of the year, P.154/96, P.170/96, P.219/96 and P.225/96 were left on the list of projets awaiting a date for debate.
  - 2.2 Taking account of the views expressed by various States Committees over the previous five years, the Employment and Social Security Committee commissioned an impact study to explore the possible effects of the introduction of a minimum wage so that members could be fully informed before debating

the matter. The research, however, had only just started when the States debated an amendment made by Senator Shenton to the Policy and Resources Committees Strategic Policy Report on 4th November 1997. As a result of this amendment, the principle of the introduction of a minimum wage was approved. The Employment and Social Security Committee subsequently completed the research so that it had sufficient information on which to base an appropriate system for Jersey.

### **3. Research and consultation**

- 3.1 The impact study, which was undertaken by the Institute for Employment Studies, obtained the views of 750 employers, covering a representative sample by industry and company size. In addition the views of representatives of the Jersey Hospitality Association, the Jersey Farmers' Union, the Jersey Federation of Small Businesses, the Institute of Directors, the Chamber of Commerce, the Transport and General Workers' Union and the Institute of Personnel and Development were also sought. In light of the research, the Committee issued a consultative document and invited comment. This was followed up with further consultation with those most affected by a minimum wage, namely the Jersey Hospitality Association, the Federation of Small Businesses, the Jersey Farmers' Union, the Tourism Committee and the Agriculture and Fisheries Committee and also the Transport and General Workers' Union.
- 3.2 With the exception of the Transport and General Workers' Union, the views obtained from the follow-up meetings demonstrated that those most likely to be affected by a minimum wage were not optimistic about the impact and most urged the Committee to move forward with caution.

### **4. The principle of a minimum wage**

- 4.1 The principle and philosophy of minimum wage is by no means clear, although it has social, economic and labour market impacts. Whilst it can be argued that it will have little effect on those in poverty who are not in work, for example pensioners, the concept of decent pay for a fair day's work has much to

commend it. Others, however, would argue against market intervention. Perhaps a measure of a society's stance on minimum wage is best gauged by the reaction and comments on its introduction -

- (i) Employers in the IES survey were generally in favour of the introduction of a minimum wage. Overall, two-thirds of all employers thought introducing a minimum wage to be a positive step, although most employers generally took a pragmatic stance on the issue and thought that the level at which the minimum was set was more important than the principle.
- (ii) Only when respondents thought they would be damaged by the introduction of a minimum wage did the survey find objection in principle. Most of those in favour thought there were good social reasons for a minimum wage, whilst those against tended to oppose the principle of intervention in a free market. Employers were fairly evenly divided over whether the minimum wage would help or hinder the overall economy.
- (iii) In the consultation exercise, representatives of both the Hospitality Association and the Jersey Farmers' Union highlighted the fact that minimum wages were already in existence in their sectors, with the minimum being set in negotiation with the TGWU.

4.2 In reaching its recommendations on a minimum wage in Jersey, the Committee has adopted the following principles: that it should support a competitive economy; be set at a prudent level; be simple and straightforward; and yet make a difference to the low-paid.

## **5. The incidence of low pay**

5.1 The survey estimated that, on 1st September 1997, the numbers on low pay were as follows -

	No. of employees as at 1st September on less than:			
	£3.00	£3.50	£4.00	£4.50
Total employees per wage band <sup>1</sup>	759	2,546	2,910	2,538

The survey also identified that a further c.1700 had been employed on basic rates below £4.50 during the previous year, most of whom were seasonal workers whose contracts had finished before 1st September.

5.2 In general, these people -

- (i) mainly carried out one of four types of jobs - 27 per cent fulfilled domestic or cleaning duties including chambermaids and porters, 21 per cent were receptionists or clerical or sales assistants, a further 15 per cent were agricultural workers or labourers and another 15 per cent were waiters or bar staff;
- (ii) were broadly equally divided between men and women;
- (iii) had an average age of 27.5 years (14 per cent aged under 18, a further 32 per cent 18-24, with half being 25 years or more);
- (iv) had mainly been with their employer for over two years;
- (v) were mostly in permanent employment although one-third had temporary jobs and one-fifth were trainees;
- (vi) worked an average of 38 hours a week;
- (vii) were generally able-bodied;

<sup>1</sup> One-third of these people will also have benefits in addition to their wage.

(viii) generally classified themselves as Jersey residents, although this did not mean that they had residential qualifications.

5.3 Information about the nature of the employers paying less than £4.50 was also obtained -

- (i) employers of low-paid staff generally found it more difficult to raise prices and operated in more competitive markets than other firms;
- (ii) long established, rather than new businesses, were more likely to employ people on a basic rate of less than £4.50;
- (iii) employers with low-paid employees were more likely to have negotiated salaries with trade unions;
- (iv) two-thirds of employers with employees on less than £4.50 an hour found it very easy or quite easy to recruit people at this level and most employers considered labour turnover amongst this group to be low;
- (v) six per cent of Jersey employers employed at least one person on less than £3.00 an hour;
- (vi) 15 per cent employed at least one person on less than £3.50 an hour;
- (vii) 22 per cent employed at least one person on less than £4.00 an hour;
- (viii) 31 per cent employed at least one person on less than £4.50 an hour;
- (ix) in most cases low-paid workers constituted a significant proportion of the total number of people employed in a firm. For example, in over two-thirds of businesses with employees on less than £4.50, such employees comprised over half the workforce;



- (x) larger employers were more likely than smaller employers to employ someone on less than £4.50;
- (xi) over half the employers in the agriculture and hospitality sectors and 40 per cent in retailing employed someone on an hourly rate of less than £4.50.

5.4 In summary, the employers most affected will be those in the agriculture and hotel and catering sectors, although retailing and the miscellaneous sector, which includes activities such as hairdressing, will also be particularly affected. Even some non-service sector employers will feel an impact.

## **6. Committee's approach**

6.1 The Committee's approach, subject to States approval of the recommendations made in this report, would be to introduce enabling legislation setting the framework and the legal definitions, supported by Regulations that define the details. The Committee, in this report, however is outlining some of the key issues that will need to be resolved and debated in the construction of the legislation.

## **7. Defining the wage**

7.1 Only one third of low-paid staff in Jersey receive a basic wage. The majority have complex pay structures, with 25 per cent being eligible for bonus payments e.g. for attendance or performance, 25 per cent for shift pay, ten per cent having the equivalent of their Social Security contributions paid for them, and 56 per cent benefiting from in-kind payments such as accommodation, uniform and meals.

7.2 The Employment and Social Security Committee, however, feels that the definition of minimum wage should be simple and fair, easy to comply with and straightforward to enforce. For these reasons the Committee is recommending that payments based on output, productivity or performance should count towards the minimum wage, including, for example, payment by results, commission, bonuses, and tips and gratuities paid

through the payroll during the relevant pay period (this is in line with current practice for Employment and Social Security contributions and for taxation purposes.)

7.3 The Committee believes that, in whatever way workers' pay is defined or whatever hours they work, only pay for "standard" working should count. Hence employers should not be able to include benefits and premium payments, such as overtime and shift premia. However, taking account of the unique situation in Jersey with regard to accommodation, and not wishing to further inflate the housing rental market, the Committee recommends that accommodation should be the only benefit-in-kind that should be taken into account, for which an offset should be allowed. The Committee is recommending that this offset should be determined by regulations and suggests that it should be introduced at £40.00 a week. This is much less than the amounts suggested by the industries affected, but probably represents a realistic deduction rather than a market value.

7.4 The Committee recommends that all actual working time should be covered by the minimum wage. To help enforcement and to enable some employers and employees to continue with more flexible employment practices that are to the benefit of both parties, the Committee recommends that compliance should be measured by averaging pay over the workers' normal pay period up to a maximum of one calendar month.

## **8. Training and development**

8.1 The acquisition of skills remains a priority for workers of all ages, especially those moving into a new sector or returning to work. A new employee, however, who brings no prior knowledge or experience to an employer needs time to be developed and initially, therefore, they may not contribute fully to the workforce. In consultation with the Training and Employment Partnership, the Committee feels strongly that the minimum wage should not become a barrier to the receipt of structured training or taking on an inexperienced worker. To achieve this, and in order to provide an incentive for employers to train, the Committee recommends that workers on accredited

training courses should be eligible for a “trainee rate” for a maximum of one year only when beginning a new job with a new employer.

## **9. Choosing the rate**

9.1 The Employment and Social Security Committee feels that a judgement needs to be made about the balance between a high minimum wage, which would make a more substantial difference to the low-paid, and the risk that jobs might be lost, that the cost of living might increase or that there might be other additional consequences to the economy and competitiveness of the Island.

9.2 Consideration needs to be given to a wide range of impacts - on differentials, business costs, competitiveness, inflation and employment. The Employment and Social Security Committee is recommending a rate that it believes should limit the effect on differentials, although the Committee is aware that the impact will vary from sector to sector. The hospitality industry gives most cause for concern in this area because of the more complex wage structures that exist in this sector.

9.3 Immigration is another factor to be taken into account. The rate should not encourage immigration and some consideration therefore needs to be given to the rate that is set in the United Kingdom.

9.4 The Committee feels that the costs to businesses will vary substantially, both between and within sectors. Evidence from the research indicates that the key impact will be on profitability - with ten per cent of employers saying that their business would no longer be viable if they had to raise wages to a new minimum level. According to employers, there is limited scope to improve productivity, although 25 per cent did expect to employ fewer people if a minimum wage was introduced.

9.5 The IES research demonstrates that -

- (i) of those employers with low-paid employees, 43 per cent said they definitely thought £3.00 an hour to be an acceptable rate, only 27 per cent thought so about £4.50;
  - (ii) overall the majority of employers with low-paid employees think a minimum wage of around £3.50 to £4.00 an hour acceptable;
  - (iii) of those employers who feel they would be harmed by the introduction of a minimum wage, the peak is around £3.50, although a majority of these employers felt that a minimum wage of around £3.50 - £4.00 would be at least possibly acceptable;
  - (iv) 59 per cent of employers in the agricultural sector thought a minimum wage level of £3.50 would be acceptable, compared with only 31 per cent in favour of a rate of £4.50;
  - (v) in hotels and catering and the retail sectors the positive balance peaks at £4.00 an hour;
  - (vi) about 450 jobs could be lost if a minimum wage of over £4.00 was introduced immediately.
- 9.6 Having taken evidence from numerous sources and applied the principles described earlier in this report - that a minimum wage should offer real benefits to the low-paid, while avoiding unnecessary risks to businesses and to jobs and discouraging immigration - the Committee has concluded that the appropriate rate for the minimum wage should be £3.70 an hour initially and that a trainee rate should be set at £3.20 an hour for the maximum period of up to 12 months discussed previously. This could lead to a pay rise for up to 4,000 people based on the 1997 survey.

## **10. A Minimum Wage Commission**

- 10.1 The Employment and Social Security Committee strongly recommends that a body, chaired by an independent person and

comprising employer and employee representatives, should be established in Law with the purpose of reviewing the minimum wage and its system of administration. Based on its deliberations, the Employment and Social Security Committee would make recommendations to the States concerning the system and future rates.

## **11. Exemptions**

- 11.1 The Employment and Social Security Committee believes that, at the suggested rates, the minimum wage should apply to all workers, and no exemptions are therefore recommended at this stage. However, the legislation should include provision for the States to make exemptions, by Regulations, to a minimum wage in the future, so that the Island can retain flexibility where necessary. It should be noted that the intended definition of “worker” encompasses all people in employment over the school leaving age, but excludes voluntary workers who wish to work for no pay and individuals who are undertaking work activities principally for therapeutic reasons.

## **12. Implementing and enforcing**

- 12.1 The IES survey provides clear evidence that enforcement of a minimum wage will be a major issue in Jersey. Most employers in the survey felt that a minimum wage should be strictly enforced, although they were also concerned it would lead to greater bureaucracy. The importance of enforcement is emphasized by the finding that 40 per cent of employers potentially affected by a minimum wage said that they would not take any notice and carry on as before.
- 12.2 For these reasons the Committee strongly believes that the introduction of a minimum wage should coincide with its recommendations concerning wider industrial relations reforms, in particular the introduction of a framework for dispute resolution, a route to access enforcement by the individual and legislation to protect workers from unfair dismissal. The Committee is therefore recommending that a Jersey Advisory and Conciliation Service and an Employment Tribunal be

established, and legislation on unfair dismissal be introduced, prior to or at the same time as the introduction of the minimum wage. It is important that an individual has reasonable protection against unreasonable dismissal in law and a way of pursuing action against an employer not paying the minimum wage.

- 12.3 To aid enforcement and to ensure that all individuals can understand their hourly rate of pay, the law will also have to require employers to provide all employees with a pay slip which contains the minimum wage rate and sufficient information to enable workers to confirm readily whether they have received the statutory minimum. The Employment and Social Security Committee would have responsibility for verifying employers' compliance with the minimum wage. For this to be achievable, however, employers will be required to keep appropriate records so that they can demonstrate that they have met the requirements of a minimum wage.
- 12.4 Taking into account the impact on businesses and the requirement for new and additional records to be kept, the Employment and Social Security Committee feel that employers should be given reasonable time to prepare for the minimum wage (employers in the hospitality sector, for example, set their tariffs 18 months in advance in order that they can be included in tour operator brochures). The Committee therefore proposes that the minimum wage should commence with effect from the 1st January 2000. This suggestion, however, is totally dependent on the availability of resources in terms of -
- (i) the introduction of the wider industrial relations reforms which are being developed, and in particular unfair dismissal, a Conciliation Service and an Employment Tribunal;
  - (ii) adequate financial and manpower resources (as described below); and
  - (iii) appropriate law drafting priority.

### 13. Resources

- 13.1 To service the Minimum Wage Commission and carry out the necessary advisory and enforcement duties, at least three additional public sector employees (civil servants) will be required, and adequate funding for their employment (estimated to be £110,000 salary costs for the year 2000) in order to prepare law drafting briefs, handle enquiries, give guidance, police the system and prosecute where appropriate. Depending on the complexities involved, more staff may be required, particularly in the initial stages whilst the principles are being established. The alternative is to contract out some of this work but the possibilities may be limited as the “inspectors” would need to be stationed on Island. It is not known whether there is any private sector business in this market in Jersey or whether the States would wish to give a private business powers of entry onto employers’ premises.
- 13.2 The establishment of the Jersey Advisory and Conciliation Service and the Employment Tribunal will carry additional resource requirements, which are estimated to be in the region of £200,000 each year. However this would cover all arbitration, conciliation and appeals work under all aspects of the proposed Employment Law (See Annex 1).
- 13.3 To meet this timescale, substantial law drafting resources will have to be allocated or re-allocated to the development of primary and subordinate legislation for the introduction of a minimum wage and the proposed system of administration, as well as to the other legislative matters referred to above in the context of wider industrial relations reforms. The Policy and Resources Committee may have to instruct the Law Draftsman accordingly.
- 13.4 An additional £100,000 each year will be required for Employment and Social Security funded employment schemes, covering the Headway programme for the long-term unemployed and disabled people employed within a sheltered work environment which currently includes training allowances and wages below the recommended minimum rate of £3.70.

Other Committees with other responsibilities may also require additional funding.

#### **14. Conclusions**

14.1 The recommendations of the Employment and Social Security Committee form a coherent package which aims to be simple, straightforward, prudent and supportive of a competitive economy.

14.2 Introducing a minimum for wages should not deter employers from continuing to pay well above this level. The Committee has recommended a package that takes account of business realities but removes the worst cases of exploitation, thereby making a difference to a large number of workers. Continuing review and periodic uprating by an independent body should ensure that the minimum wage finds a balance between the needs of the low-paid and the economic needs of the Island.

#### **15. Summary of recommendations**

##### 15.1 The rate

- (i) The minimum wage should be a single hourly rate as the States may from time to time prescribe by Regulations.
- (ii) A trainee rate, to be prescribed by Regulations, should be available for individuals who are on accredited training courses. Accredited training courses should be prescribed by regulations in consultation with relevant parties and the trainee rate should be restricted to a 12 months maximum period.

##### 15.2 Implementing and enforcing

- (i) It is proposed that the minimum wage should commence with effect from 1st January 2000, subject to the necessary resources as detailed in the report being made available.



- (ii) Individuals should have the opportunity to ensure compliance with the minimum wage through the proposed broader Employment law, which includes the establishment of both a Jersey Advisory and Conciliation Service and an Employment Tribunal.

### 15.3 Minimum Wage Commission

An independent body should be established to advise the Employment and Social Security Committee on future recommendations in relation to the minimum wage. These recommendations should include a mechanism for updating.

1st October 1998.

**ANNEX 1****SUMMARY OF THE PROPOSED EMPLOYMENT  
LAW REFORMS**

1. **Employment legislation currently in place in Jersey**
  - 1.1 Prior to the formation of the Industrial Relations Committee in 1969, no Committee had specific responsibility for employment or industrial relations matters. For a variety of reasons, including lack of resources, there has been no co-ordinated approach towards employment legislation and, as a result, such legislation is now largely fragmented, outdated and ineffective.
2. **The proposed new employment legislative framework**
  - 2.1 The Employment and Social Security Committee is proposing that specific measures are introduced to protect both employers and employees, and will be consulting on the following proposals over the coming months -
    - (i) a new EMPLOYMENT LAW is introduced to consolidate or replace existing legislation and provide additional rights and obligations for both employers and employees in the Jersey context;
    - (ii) a JERSEY ARBITRATION AND CONCILIATION SERVICE is introduced to prevent and resolve problems in the workplace;
    - (iii) an EMPLOYMENT TRIBUNAL is introduced to enforce the Law when advice and discussion fail to produce a resolution to a problem.
  - 2.3 It is envisaged that the main Law would contain the core provisions, with Regulations covering the details of application and of processes and that Approved Codes of Practice would be used where possible to support the legislation.

### 3. **Arbitration, conciliation and enforcement**

3.1 In the United Kingdom, ACAS is generally acknowledged to be a very effective service by all concerned, including representatives both of employers and employees. It should be straightforward to set up a similar, equally effective organisation locally. A fundamental principle is that the service must be clearly independent of any political influence and of influence from employers and employees. For this reason, it is considered that the Jersey Advisory and Conciliation Service (JACS) should be established as an independent agency which has no direct links to the political system, but which is funded from Government revenues.

3.2 Before providing assistance, JACS would encourage parties to make full use of any agreed procedures they may have for negotiation and the settlement of disputes. Its main duty would be to assist in building harmonious relationships between employers and employees, collectively and individually, where required, and in particular to -

- (i) prevent and resolve industrial disputes;
- (ii) resolve individuals' disputes over employment rights;
- (iii) provide information and advice about employment matters and practice;
- (iv) promote fairness and good practice in the conduct of employment relationships.

The aim of JACS would be to offer to assist both parties involved in a dispute to reach a voluntary settlement without the need to go to an Employment Tribunal hearing.

3.3 It is also proposed that an Employment Tribunal be established with a legally qualified Chairman and two members, one drawn from a panel of people representing employees and one from a panel representing employers to provide a suitable body to -

- (i) resolve disputes or differences between employer(s) and employee(s) concerning matters relating to employment or non-employment and terms and conditions of employment where voluntary agreement cannot be reached, with or without a third party; and
- (ii) enforce employment rights and obligations provided by relevant legislation, both current and future (including minimum wage).

#### 4. **Resource implications**

- 4.1 A Jersey Advisory and Conciliation Service would need to be headed by a Director who is a senior professional in the employment relations field with appropriate high level skills and experience and supported by an Advisory and Conciliation Officer, with some administrative support. It would be a small but highly professional team.
- 4.2 Costs of the Employment Tribunal will be minimised if it is able to use the accommodation allocated to JACS and is supported by JACS staff.
- 4.3 In total it is estimated that the costs will be in the region of £200,000 each year which will include staffing, the operation of JACS and the accommodation for the Employment Tribunal. Savings of approximately £50,000 could be made from the amalgamation of the current Industrial Relations service.