

# STATES OF JERSEY

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## **DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 5)(JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 9th December 2008  
by the Minister for Social Security**

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**STATES GREFFE**





Jersey

# DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 5) (JERSEY) REGULATIONS 2009

## REPORT

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### 1. Introduction

Jersey's Minimum Wage has been in force since 1st July 2005. On the basis of the Employment Forum's recommendation, the Minister for Social Security proposes that the amounts that may be offset against the minimum wage should be increased via this amendment to the Minimum Wage Regulations.

The Minister proposes that, subject to the States' approval of the draft amendment, the minimum wage and trainee rate would be increased by Ministerial Order, to be effective from 1st April 2009.

### 2. Background

The independent consultation body, the Employment Forum, presented its recommendation to the Minister on 30th October 2008 (attached at **Appendix 1**). The Minister responded to the Forum's recommendations on 1st December 2008 and that response is attached at **Appendix 2**. In summary, the Forum recommended the following increases –

	1st April 2008	1st April 2009
Minimum Wage	£5.80	<b>£6.08</b>
Trainee Rate	£4.35	<b>£4.56</b>
Accommodation offset	£63.47	<b>£66.52</b>
Accommodation and food offset	£84.63	<b>£88.69</b>

### 3. Offsets

Regulations may be made under Part 4 of the Employment (Jersey) Law 2003 specifying permissible offsets against the minimum wage, requiring that all employees in Jersey are paid at an hourly rate which is equal to or greater than the minimum wage. The Regulations ensure that the ability to offset benefits in kind against weekly wages is limited only to charges made by the employer for living accommodation, or living accommodation with food.

The Forum recommended that the 2 offsets should be increased by the same percentage as the minimum wage rate, 4.8% to avoid the distortion effects that would occur if the rates were increased in isolation.

This proposed amendment to the Regulations would increase the maximum value that may be attributed to the 2 benefits in kind, effective from 1st April 2009, 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 would be **£66.52**.
- For the provision of both accommodation and food to the employee, the maximum weekly offset against the minimum wage would be **£88.69**.

### 4. Minimum wage rates

Subject to the States' approval of the proposed Regulations, the Minister for Social Security proposes that an Order would be made under Article 16(3) of the Employment (Jersey) Law 2003, to apply the following rates:

from 1st April 2009 –

- An hourly **minimum wage of £6.08**, to apply to all employees over school leaving age, except when the trainee rate is paid, and ‘special classes of person’, which includes share fishermen, residential members of religious communities, and others as detailed in Articles 36 to 43 of the Employment Law.
- An hourly **trainee rate of £4.56** which may be paid to an employee over school leaving age, who is undertaking an accredited course of training for a maximum period of one year, when in a new job, with a new employer, by written agreement.

There are no financial or manpower implications for the States arising from these Draft Regulations.

**RECOMMENDATION – MINIMUM WAGE RATES FOR 1ST APRIL 2009**

**PURPOSE OF RECOMMENDATION**

This recommendation is the outcome of the Employment Forum's third review of the minimum wage, the main purpose of which is to recommend a minimum wage rate to take effect from 1st April 2009. It also makes recommendations in regard to the trainee rate, the maximum amounts that may be offset where accommodation and food are provided, and identifies issues that will require further consultation.

**SUMMARY**

Section 1– Background

Section 2– Minimum wage rates in other jurisdictions

Section 3– Recommendations

Appendix 1– Table – Minimum wages as a % of average wage in other jurisdictions

If you wish to receive an electronic copy of this recommendation, please contact the Secretary, or download it from the States website –

[www.gov.je/ChiefMinister/PublicConsultations](http://www.gov.je/ChiefMinister/PublicConsultations)

Miss Kate Morel  
Secretary to the Employment Forum  
PO Box 55  
La Motte Street  
St. Helier  
JE4 8PE

Telephone: 01534 447203  
Fax : 01534 447446  
E-mail: [K.Morel@gov.je](mailto:K.Morel@gov.je)

This recommendation has been prepared by the following members of the Forum:

Wendy Lambert – Chair  
Sally Johnson – Deputy Chair  
Melvin Le Feuvre  
Carol Le Cocq  
David Robinson  
Jan McCarthy  
Rosemary Pestana  
Jeralie Pallot.

**SECTION 1 – BACKGROUND**

The original report to the States on 'Minimum Wage Legislation' (P.227/1998) was debated by the States and approved in March 1999. It was based on research carried out in 1997, and provided for the introduction of a minimum wage and trainee wage, and the establishing of the independent Employment Forum to act as a consultative body; monitoring the economic impact of the minimum wage and making recommendations to the former Employment and Social Security Committee (ESSC).

The Employment Forum's first Minimum Wage Recommendation was issued in October 2003, based on which a Minimum Wage Report was presented to the States by the ESSC on 6th January 2004, providing information regarding the likely rate of minimum wage.

On 20th July 2004, the States of Jersey approved the subordinate legislation required to bring the minimum wage into force under the Employment Law. The Employment (Minimum Wage) (Jersey) Regulations 2004 and the Employment (Minimum Wage) (Jersey) Order 2004 came into force on the same date as the Employment Law (1st July 2005) which provided the legislative framework for the minimum wage and formalised the Employment Forum.

The minimum wage was due for review less than four months after it came into force, making a full assessment of any impact on the economy very difficult. The Forum's first "Minimum Wage Review" recommended a 3% increase which was approved by the ESSC. The Regulations were approved by the States on 14th February 2006, following which the newly appointed Social Security Minister made an [Order setting the new minimum wage rates](#), to apply from 1st April 2006.

The Forum's second review of the minimum wage was conducted in late 2006 and recommended not only rates for implementation in April 2007, but also a formula by which the 2008 rates would be set. The intention was to give businesses a greater period of notice of any new rates. The Forum understood from consultation responses that Hospitality and Agriculture employers are the most likely to be negatively affected by inadequate notice of new rates due to the need to set prices and tariffs in advance.

In order to provide more notice, the Forum recognised that a formula would be necessary. The 2007 and 2008 rates were recommended to be set by reference to 40% of the average weekly earnings, as provided by the June Average Earnings Index figure of the previous year, but with the proviso that the Forum would take account of any factors having a major impact on the economy before the 2008 rate was implemented.

The result was that the minimum wage was increased by 3.1% in April 2007 (compared to a 3.3% rise in average earnings reported for June 2006) and 7.4% in April 2008 (compared to a 4.7% rise in average earnings reported for June 2007).

## **SECTION 2 – OTHER JURISDICTIONS**

Following a recommendation from the Low Pay Commission, the **UK** minimum wage rates increased on 1st October 2008 as follows:

- Workers aged 22 and over – up 21p to £5.73 (a 3.8% increase)
- Workers aged 18–21 – up 17p to £4.77 (a 3.7% increase)
- Workers aged 16–17 – up 13p to £3.53 (a 3.8% increase)
- Maximum accommodation offset – up £1.12 to £31.22 per week.

The **Isle of Man** minimum wage rate from 1st October 2008 is:

- Adult workers (18 and over) – up 40p to £6.00 per hour (a 7.1% increase).

The rate proposed by the Minimum Wage Committee was £5.85, however the Department of Trade and Industry proposed the higher rate due to the rising costs of food and energy and increases in inflation since the Minimum Wage Committee's report.

The other rates have not been increased since 1st October 2007 –

- 17 year-olds and certain trainees – £5.24 per hour
- 16 year-olds – £4.67 per hour
- Maximum accommodation offset - £36.40 per week.

**Guernsey** does not currently have a minimum wage, however public consultation has been undertaken to seek views on whether minimum wage legislation is required and draft legislation is expected to be proposed shortly, subject to further consultation.

## **SECTION 3 – RECOMMENDATIONS**

### **Consultation procedure**

During the period 21st July to 1st September 2008, consultation papers were circulated to those on the Forum's consultation database (approximately 200 in total), which includes employee and employer representative associations, as well as large and small employers in various industries, independent bodies and individual interested parties.

The Forum received 18 responses from a good range of respondent types and industries, including; Agriculture, Hospitality, Retail, Finance and Utilities.

Trade union/staff association	1
Employee	2
Employer	9
Employer association	4
Other	2

### **Method of uprating the minimum wage**

Some of the respondents did not agree with the method that has been applied by the Forum in 2006 and 2007 to

update the minimum wage. The basis for these concerns appears to be, in some cases misunderstanding of the formula that is being applied, and in others, concern about the suitability of the average earnings statistics for this purpose.

The Index of Average Earnings measures changes in average earnings (gross wages and salaries) that have occurred, and been paid, to workers in Jersey. It includes overtime payments, but excludes bonuses, employers' insurance contributions, holiday pay and benefits in kind (e.g. free accommodation or meals). The 2008 Index measures changes in average earnings received between the last weeks of June 2007 and June 2008. The Forum understands that, unlike the Retail Price index, the average earnings index is not influenced directly by the Bank of England base rate.

The Jersey Advisory and Conciliation Service (JACS) commented: *"The fact that the reported average weekly earnings relies on the same companies making returns in consecutive years causes us some concern as we do not know whether it allows for a fair comparison, year on year. The reported average weekly earnings increase appears to be influenced by a different mix of data, depending on which organisations decide to make a return. We would like to see a more consistent measure."*

The principal rationale behind the Index of Average Earnings is to measure change in earnings and the Forum is assured by the States Statistic Unit that in order to achieve this, matched pairs of data are necessary. The methodology on which the Index is based is similar to that of the UK Average Earnings Index published by the Office for National Statistics: a matched-pair estimator calculating changes in mean earnings per employee from a sample of representative businesses. In the UK, the relevant survey is the Monthly Wages and Salaries Survey.

Around 55% of employees in Jersey are covered by the survey; a very high response rate given that there is no obligation to respond. All States employers provide data and around 40 to 50% of all other employees are included. The index is designed to measure change year on year and is very accurate for measuring changes in earnings for full-time workers (part-time workers are constructed to full-time equivalents). The Forum notes that the standard rate of Social Security contributory benefit (including the States Pension) increases by average earnings each year.

JACS commented that the *"reliance upon an index that reflects overtime payments can, therefore, result in an inflated increase in the index (or a deflated increase), depending on the volume of overtime worked in June each year. Those on minimum wage may receive an inflated increase in basic pay and then themselves receive additional payments in overtime if their employer has a busy trading period."*

JACS is concerned that if overtime is the norm in some industries and not in others, by applying this index, the minimum wage will be set in reference to data that may not be relevant to those industries in which the minimum wage is typically paid.

The Forum considers that overtime is only a small percentage of wages in most cases, and as the average earnings index is based on 2 years of matched wage information, the highs and lows of overtime are likely to average out. The Forum understands from the Statistics Unit that overtime is unlikely to greatly influence the data. Increases shown in returns from the Agriculture and Construction industries tend to be the most influenced by overtime payments. However, it has been seen that even a large increase in overtime earnings in one of those sectors is not enough to drive the whole index up.

JACS went on to suggest that *"the States Statistical Unit be tasked with the job of: 1. Seeking agreement with a "basket" of organisations that they will provide relevant information about their basic working hours and basic wage structure, year on year (excluding overtime), and 2. Collecting that data in June each year, producing a true index to allow an accurate assessment of the percentage increase that is to be recommended."*

The Forum understands that it will not be necessary for the Statistics Unit to devise an additional survey specifically for this purpose, plus it would place an added burden on businesses, leading possibly to lower response rates to surveys overall. The Statistics Unit has suggested that next years' average earnings survey includes a minor adjustment to enable employers to indicate how much of gross wages are overtime. The Statistics Unit will then be able to determine the extent of the influence of overtime on the index, as well as assessing whether or not separate information regarding overtime payments can readily be provided by employers.

The Jersey Electricity Company (JEC) also considers that: *"the average earnings index is not a reliable indicator of earnings. We only need to see the impact of the States increases which historically either have no increase or two applied to them due to the timing of their pay award. We are also aware from our own returns that other factors such as change of business use, levels of overtime, project work etc. creates significant distortions on the*

*figures sent to the Statistics Office.”*

Employers in the Hospitality and Agriculture industries commented similarly about the impact that the Finance industry might have on the index.

A large Hospitality employer questioned whether the average earnings index should be applied: *“Due to the finance industry Jersey has a very high proportion of higher end earners which will skew average wage percentages. How stable is the index that is used?”*

An agricultural employer said: *“This average is heavily skewed towards the Finance and Public sector wages where wage levels are significantly higher and overshadow the much smaller sectors of the economy in GDP terms such as agriculture and hospitality. It must also be recognised that the impact of the minimum wage on the broad spectrum of services covering the finance sector is miniscule because very few employees in that sector will be employed at that level of pay. By contrast, the minimum wage has [a] huge impact on the agriculture sector which is largely dependent on bottom end sector wages as a main element of cost in production of crops for export. Trying to link non-finance sector wages to movements in average levels heavily biased on the finance sector movements where demand is chasing too few qualified staff – leading to higher wage pressure – is both unrealistic and potentially disastrous for these sectors.”*

The Jersey Hospitality Association commented: *“The index being used has to ensure stability and must show a structured process is being used in determining that participants are representative of locally owned and operated businesses. The method used must avoid being dependant on certain economic factors that may be only relevant to certain industries. There may be a case of segmenting the process so as to show specifically the position of hospitality, agriculture and retail for benchmarking purposes.”*

The Forum considered whether it should segment the average earnings index so that only wage increases for the industries that typically pay the minimum wage would be taken into account in the uprating, removing the Finance industry in particular. However, the Statistics Unit warned against using the data in this way, as the index becomes less robust when it is based on smaller samples of wage data.

Increases between June 2007 and June 2008 were greater in Agriculture (6.5% increase) and Hospitality (5.1% increase) than in any other industry, a fact which has been attributed in the average earnings report to the 7.4% minimum wage increase in April 2008. To increase the minimum wage only in reference to these 2 industries would perpetuate increases above the overall average weekly earnings (for example a 5.8% minimum wage increase if the average of the 2 industries is taken).

The JEC criticised the use of a formula: *“One of the statutory duties of the Employment Forum is to measure the Economic impact of any increase of the minimum wage. I struggle to see how the Forum will be able to meet this statutory requirement if using a formula. Historically the minimum wage has had the largest effect within the agricultural and tourism industries and therefore any consideration of an increase whether that be a real increase or purely an inflationary factor needs to consider the impact on these industries.”*

The Forum intended that the formula should not be applied blindly, but should be open to re-assessment each year in view of any economic circumstances closer to the time of implementation. The Forum aims to achieve an appropriate balance given the available information, as well as views from consultation and advice on the economic outlook, whilst aiming to base increases on data, rather than on an arbitrary figure. The Forum considered that it would be unwise to simply disregard the formula after only 2 years, particularly as the June 2008 average earnings report demonstrates that the formula will not necessarily produce an inflated increase.

### **Impact on business**

In the Forum’s 2006 review, most respondents indicated that the 2005 minimum wage increase had a minimal impact on their business. The Forum was interested to note that respondents now appear to be more concerned about minimum wage increases than previously.

The Forum’s 2006 recommendation resulted in a higher minimum wage (£5.80) than would have been recommended if the 4.7% average earnings increase figure had been applied (£5.65) and this appears to have created some uncertainty, particularly amongst Hospitality and Agriculture employers. A large Agricultural employer, for example, commented that if minimum wage increases continue to exceed average earnings, they would not be affordable.

A large Hospitality employer said that pushing the percentage beyond 40% would cause considerable problems for their business: *“The minimum wage has had the effect of eroding differentials so has not just pushed wages up at the lower end of the scale but also throughout the organisation. Increased competition means that it has not*



*been possible to pass on these costs to the consumer, thus affecting the profitability of the company.”*

The Jersey Hospitality Association said that: *“the Minimum Wage has forced many businesses to increase wages across all positions over and above what is easily affordable and has had the effect of eroding and undermining differentials. Wage increases have been disproportionate and increased competition and operating costs has meant that businesses have not been able to pass on these costs to the consumer, thus affecting the profitability of a business.”*

Another large Hospitality employer commented that: *“the 2007 review saw a very significant increase to our wage costs with a minimum wage increase of over 7%. This has impacted upon business profitability and the incentive to trade as revenue levels have fallen during the year due to competition [on and off the island], the ‘credit crunch’, and other factors...whilst there will be pressure to increase a minimum wage this year from some quarters, in mind of the steep increase seen last year, I would submit that this is not a time for a significant increase in the minimum wage.”*

The Channel Islands Co-operative Society said that: *“The uncertainties arising out of the current adverse economic environment make it imperative for businesses to minimise costs and make even further improvements in efficiencies. Previous recessions have highlighted the dangers of a costs/wages spiral leading to ‘stagflation’. Until the outcome of the current economic downturn is more certain, we urge a cautious approach and suggest that any increase should be limited to the rise in the RPI.”*

The Jersey Farmers’ Union said that *“the initial minimum wage had little effect on our Industry as it was set at a level that was very similar to the wage that was being paid by our Industry for its non skilled labour at the time. Until 2008, the increases have been slightly above the RPI but not excessively so. The move towards utilizing a formula whereby the minimum wage would be set with a view to achieving a minimum wage that would be 40 or 45% of the average wage led to a 7.5% increase has had a significant impact on profitability.”*

The Forum noted the concerns of employers in these sectors. These comments reinforced the Forum’s view that respondents were concerned that, by moving to a formula based on weekly average earnings, minimum wage increases will continue to be above average earnings and RPI, and that the Forum will no longer consider the impact on business of any proposed increases. However, the June 2008 average earnings report shows that this is not the case.

The Forum noted that applying the 40% formula to the June 2008 weekly average earnings figure of £600 results in a lower minimum wage (£6.00) than if the average earnings increase of 4.3% were applied (£6.05). This shows that the formula itself will not always result in an increase that is greater than the average earnings index figure, as it did when the June 2007 weekly average earnings figure was applied.

### **Statistical and Economic information**

During the Forum’s 2006 review of the minimum wage, the States Economic Advisor emphasized that it was a critical time for wage increases and inflation. He is quoted in that review as follows: *“The economy is performing strongly but it is at this point in the cycle where problems have arisen in the past with higher wages pushing up inflation. Policy should focus on trying to break this cycle of higher wages feeding into higher inflation and wage increases should therefore reflect productivity growth.*

*The States are aiming for a 2% growth across the whole economy, across all sectors. Any modest increase in the minimum wage might have a minimal impact on the overall economy (as long as it did not lead to a wider restoration of differentials), but would have a greater impact on export driven sectors where the main competitors are elsewhere. Both the Tourism and Agriculture sectors have seen their output fall by about 20% between 1998 and 2005 and these are the sectors most likely to be affected by any increase in the minimum wage. Full consideration needs to be given to improving the competitiveness of these export orientated industries and increases in the minimum wage can hinder firms competitiveness, especially where they compete with low wage economies that do not have minimum wages.”*

The Statistics Unit’s 2007 report on the Gross Value Added and Gross National Income<sup>[1]</sup> shows that the Island’s economy continued to grow in 2007 with the same 7% growth as in 2006. The Forum noted that the Agriculture industry grew for the third year in a row; however the Hospitality industry remained flat.

During the Forum’s latest minimum wage review, the Economic Advisor commended there has been continued strong growth in the economy in 2006 and 2007, and that the Finance industry was still expecting further growth in profitability in 2008. However, since then, economic conditions outside Jersey have deteriorated significantly, suggesting that Jersey will face a significant slowdown in the economy in the next 18 months.

The significant economic uncertainty created by the onset of the credit crunch has been compounded by the rise in global inflation through higher food and oil prices. The Economic Advisor emphasized that this means, despite the impending slowdown in the economy, it still remains a critical time for inflation. The risk of a build-up in inflationary pressure remains through a wage-price inflationary cycle, not only with higher food and oil prices (as in other countries), but with the added effect of a Goods and Services Tax in Jersey.

Jersey is primarily an export-driven economy, whether it be Finance, Hospitality or Agriculture. With global markets deteriorating, it is critical that Jersey businesses are able to maintain or enhance their competitiveness in the difficult trading times ahead.

The Forum understands that if the minimum wage (as with any other wage) were to be increased by an extra 3% to reflect the introduction of GST, this would defeat the point of the new tax. Trends in VAT in the UK and Isle of Man show that the effect of such taxes will drop out of the Retail Price Index if employers do not increase wages to compensate employees.

This year, the Forum considers that with a downturn in the economy, as well as a number of specific factors to consult upon, the minimum wage should be reviewed during 2009, rather than in 2 years' time, as it would be dangerous to make a recommendation 2 years in advance in such uncertain circumstances.

The current minimum wage is £5.80 per hour giving average weekly earnings (based on a 40 hour week) of £232. This is 40% of the average weekly wage of £580 (reported at June 2007). The Forum considered the rates resulting from the following methods of increasing the minimum wage based on the indices available to it at that time:<sup>[2]</sup>

	Minimum wage per hour
RPI – 5.6%	£6.12
RPI(Y) <sup>[3]</sup> – 3.9%	£6.03
AEI – 4.3%	£6.05
Mid-point between RPI & AEI – 4.95%	£6.09
40% of weekly average earnings (£600)	£6.00
40.5% of weekly average earnings (£600)	£6.08

Unite the Union said, “At present (September 08), the latest average earnings figures give an increase of 4.3% in the last 12 months, the RPI currently stands at 5.6%. Any formula used must ensure that there are safeguards in place in the event that there are marked differentials in average earnings and RPI statistics.” The Forum noted that to increase the minimum wage by RPI could be an inflationary driver.

The Chamber of Commerce said that “linking the minimum wage to average weekly earnings has a great risk of being self-fulfilling as regards overall hikes in wage costs for all. The impact on the agriculture and tourism sectors of increased wages can be significant. If increases are to be made, then probably best by reference to cost of living, but from which must be removed any impact relating to the introduction of GST. GST is a tax, and not to be confused with rising living costs.” Chamber also commented: “To agree an over RPI increase sends mixed messages at a time when the Island needs all employers including the States of Jersey to exercise restraint in wage demands to avoid increasing inflationary pressures.

### **The minimum wage rate**

The Forum recommended in 2006 that the minimum wage for April 2008 should be set by reference to 40% of the overall average weekly earnings, as released in the June 2007 average earnings statistics. This was based on evidence that minimum wages in other jurisdictions are generally around 40% of the average wage of those jurisdictions. The table at Appendix 1 shows minimum wages as a percentage of average wages in other jurisdictions based on 2007 data.

The Forum had previously indicated its intention to gradually increase the percentage of the average wage used in the formula towards 45% over the coming years.

The Jersey Farmers’ Union said that: “Using the proposed formula at 45% even if it takes time to get to it will make our Industry uncompetitive for both our exports and locally grown produce that competes against produce that is grown using cheaper labour elsewhere.”

The JFU also commented that: *“the use of the formula is far too simplistic and should be avoided. Our Industry mainly employs short term seasonal staff that are provided with good accommodation and do not have parking or travel to work costs. They work relatively long hours for the season and earn a reasonable return for their efforts. Unrealistic wage increases that cannot be met by the market place will lead to redundancies which are good for no one.”*

The Jersey Hospitality Association was also concerned about increasing costs, commenting that *“businesses are operating part-time shifts, job sharing, and management sharing shifts etc in order to keep payroll costs commensurate with sustainable business costs. Our industry is presently finding it very difficult to sustain the huge increases in costs that currently prevail. As a result of the concerns highlighted above pushing the % beyond 40% will cause more problems for our sector. Businesses will be forced to re-structure with job losses becoming inevitable. Small businesses will suffer most.”*

The Institute of Directors suggested that the minimum wage should be £6.08 per hour, based on a formula of 40.5% of the June 2008 average weekly earnings. Although a number of respondents said that the formula should not be increased beyond 40%, the Forum considers that this is based on an expectation that the 40% figure itself will be significantly above the average earnings figure.

There is no single correct method of increasing minimum wages. The Forum considers that 2 years is not a sufficient period in which it can determine categorically that this is not an appropriate method of increasing the minimum wage and no clear alternative has been proposed as being more appropriate.

The Forum notes that the minimum wage is about setting a minimum standard for pay. Until April 2008, the Forum had not pushed minimum wage recommendations beyond the increases in the average earnings index. Initially the minimum wage was set at a rate that was not dissimilar to wages being paid at that time in the Agriculture and Hospitality industries, and the minimum wage has been increased by 13.5% in total over 3 years. The average earnings increases over those 3 years total only slightly less at 13.3%.

Unite the Union said that *“workers more often than not are taking 2 or more jobs on in order to achieve a realistic income. £5.80 falls short of this. Three years ago we suggested a rate of £8 per hour. In today’s climate of escalating food and fuel prices, £10 per hour should not be seen as an unreasonable proposition.”*

The Forum unanimously agreed to show a commitment to very gradually increasing the minimum wage above 40% of weekly average earnings (half a percent increase for 2009).

**The Forum recommends a minimum wage of £6.08 to apply from 1st April 2009.**

### **Accommodation and food offsets**

The consultation respondents were clearly in favour of increasing the offsets by the same percentage as the minimum wage increase, other than the Institute of Directors who said that the offsets should be increased by inflation as this index has a direct correlation to the cost of providing these benefits in kind.

A large Hospitality employer commented that *“costs of providing accommodation, food, heat, lighting, water etc are continuously rising... Much comment is made about the rising costs of living in Jersey. It must be remembered that many staff on minimum wage live in accommodation provided by their employer (on a full board basis) and thus do not suffer most of these increased costs, which are in fact borne by the employer.”*

The Forum is of the view that external factors are affecting everyone who has to pay for services and accommodation in Jersey, not just employers who are providing these benefits to employees.

The Forum recommended that the accommodation and food offsets should be increased proportionately to the minimum wage rate (a 4.8% increase) bearing in mind, as always, that if increased by a different proportion, the effect of any increase in the minimum wage could be unpredictable and would be likely to have a greater impact on employers, particularly in the Agriculture and Hospitality industries.

**The Forum recommends an accommodation offset of £66.52, and a food and accommodation offset of £88.69.**

### **Food offset**

The Forum noted JACS concerns in the 2006 minimum wage review that some agricultural employers were charging two-thirds of the food offset due to difficulties in providing a midday meal, and that other employers

wanted to charge only the food element of the offset (e.g. cafés) where accommodation was not provided. The effect of the Regulations was clarified via the JACS guide to the Minimum Wage in that *"Food" is defined as 3 adequate meals on each day on which the employee is employed. Employers may not off set a proportionate amount of pay for less than 3 meals per day and a charge for food may not be off set unless accommodation is also provided.*"

The issue has been raised again in this latest review by the Jersey Hospitality Association, who asked the Forum to consider *"the introduction of a food only offset, which would assist those operators who would wish to provide meals to their staff, but not accommodation. Many restaurant businesses and others are faced with this issue."*

An Agricultural employer said that *"to impose a 3% GST cost on meals provided to staff in tied accommodation – which must be absorbed by the employer as he cannot charge the employee more than statutory allowance of £21.16 per week for 21 meals– is unreasonable. It is acknowledged that staff in the hospitality sector possibly can be fed more economically where large kitchens exist, but the same rules are being applied to the agriculture sector where no such economies can be utilised. The employer is expected to feed manual labourers for a week [at] an average cost of £1.01 per meal."*

The Forum is currently aware of only one other jurisdiction (Ireland) that allows a minimum wage offset for food as well as accommodation. As Hospitality and Agriculture were the 2 industries that were most likely to be affected by the introduction of a minimum wage, in the early stages of its minimum wage research the Forum took into consideration their different practices and procedures.

The Forum understood that the Hospitality industry traditionally provides food because it is more convenient for employees who generally work and live on site, and the Agriculture industry previously did not provide employees meals due to location difficulties. If the provision of food is unprofitable, an employer is free to stop providing meals and provide accommodation only.

The Forum noted that it will monitor the situation regarding GST and food in 2009. If GST continues to be payable on food, the Forum intends to consider whether it should recommend that the Income Tax Direction<sup>[4]</sup>, which exempts accommodation provided under a contract of employment from GST, should be extended to cover "full board" where it is provided with tied accommodation.

### **Utilities bills**

In its 2006 minimum wage review, JACS had commented that some employers had been charging employees for electricity and fuel in addition to the applying the maximum offset for accommodation. The Forum stated at that time that the practice is contrary to the purpose of the Forum's original recommendation that only 2 benefits in kind may be off set against the minimum wage. The JACS guide to the Minimum Wage was clarified: *"No other form of benefit (e.g. utilities bills) can be taken into account in determining whether the Minimum Wage has been satisfied."*

A large Agricultural employer has in this review asked the Forum to consider whether there could be more flexibility regarding employers charging employees for other genuine benefits in kind provided to them, such as electricity, fuel and laundry services. For example, electricity can be provided more cheaply via an account than if it is metered and paid for by each individual employee; however the employer may not deduct an amount for electricity from wages (on top of the maximum accommodation offset) if the deduction means that the wage per hour will fall below the minimum wage.

The Forum has previously expressed concern about overcomplicating the offsets, particularly by introducing other benefits in kind, and opening the offset up to abuse. Permitted deductions from the minimum wage are clearly defined in the Regulations and are purposely limited to remove the danger of exploitation of workers on low pay, as well as the right of the employee to decide how to spend their own wages. This does however mean that some well-meaning arrangements cannot be permitted in order to prevent the less well-meaning employers from abusing such benefits in kind. The Forum intends to consult further on other benefits in kind to take into account the experience of other industries, particularly Hospitality.

**The Forum recommends that further consultation is undertaken regarding the structure and boundaries of the offsets during 2009.**

### **Trainee rate**

Responses to the Forum's 2006 review had suggested that the trainee rate should not be increased significantly

above or below any increase in the minimum wage. The Forum proposed that it would be appropriate to return to the initial method of setting the trainee rate, which is 75% of the full minimum wage rate.

The Forum's 2008 consultation did not specifically ask questions about the trainee rate and no comments were offered by respondents in relation to the trainee rate. There is therefore no reason to recommend that the trainee rate should be calculated any differently. The Forum recommends that the trainee rate should continue to be calculated at 75% of the minimum wage rate.

**The Forum recommends a trainee rate of £4.56.**

### **Student rate**

In its 2006 recommendation, the Forum had recommended that a lower minimum wage rate should be available for students aged 16 to 18 who are in full-time education. The Forum had proposed that a student rate would enable it to consider recommending that the minimum wage should be increased by more than average earnings in the future, as a student rate would assist in avoiding the possible negative consequences on labour market opportunities for young people. The Social Security Minister accepted the recommendation and proposed the student rate to the States of Jersey. The proposal was rejected by the States and was therefore not implemented.

The Forum's latest review did not ask respondents for their views on whether a lower minimum wage for students should be recommended, however 3 respondents proposed that the Forum should consider recommending a student rate or a youth rate again, on the basis that valuable work experience opportunities are being lost.

The Institute of Directors has recommended the introduction of a £5.25 rate for employees aged 18 and under, commenting that *"there are currently a large number of students who look for holiday work each year and the consensus is that employers would not be as willing to take untrained staff if the youth rate rises above £6."*

The Channel Island's Co-operative Society said that *"the lack of a 'youth rate' has led to an increase in the cost of employing a 16 year-old by 21%. Employees in this age group generally require greater levels of supervision due to their lack of experience in the work place and due to the need to ensure that they are not subject to peer pressure in respect of age-restricted sales. The retail sector is under both constant competitive pressures and constant scrutiny by the States who are concerned about the costs of goods sold in the Island. There is therefore a need to maintain high levels of productivity while minimising costs. Extra supervision militates against both of these elements. The absence of a youth rate therefore makes it increasingly difficult to justify employing persons under the age of 18; thereby denying students the opportunity of gaining valuable work-place experience prior to leaving secondary education."*

The Jersey Hospitality Association has previously supported the introduction of a lower rate for young people and has again asked the Forum to consider recommending the introduction of a lower rate, commenting that *"the JHA supports the need to set a 'youth rate' as a result of the changing employment situation locally whereby school leavers have found difficulty in finding jobs. We believe employers are being discouraged from employing younger people as a result of having to pay them the Minimum Wage."*

A fourth respondent, a Law firm also commented on the Forum's previous recommendation for a student rate: *"the introduction of such a rate would constitute direct discrimination on ground of age and could therefore be problematic, were age discrimination legislation to be implemented. Nonetheless, at this time, we would not automatically oppose the introduction of such a youth rate, given that this would not be generally applicable to all younger workers but only those in full time education."*

Arguments voiced against the student rate in the March 2007 States debate included; that the States have previously opposed a proposition for lower rates for young people and a student rate is simply a youth rate "by the back door"; the rate introduces unnecessary complexity and is open to abuse; that it is discriminatory and exploitative to pay one 16 year-old a lower rate where he is doing the same job in the school holidays as another 16 year-old who is working full time; and that there is no evidence that the supply of jobs for students has become more limited.

Despite claims of age discrimination, the UK's Low Pay Commission has continued to justify different rates for different age groups on the grounds of evidence indicating that young people have continued to do less well in the labour market than older workers, and although that decline has abated in the last year for 16–17 year-olds not in full-time education, the Low Pay Commission nevertheless believes that lower National Minimum Wage rates for young people continue to be justified to protect their position in the labour market.

As well as the UK, the Isle of Man, the Netherlands, Poland, Slovakia, Malta, Latvia, Belgium, Czech Republic



and Ireland all have minimum wage rates for different age groups. The Isle of Man, for example, pays different rates to employees between school leaving age and 17, aged 17 but not yet 18, and a higher rate to those aged 18 years or over.

Proposals for minimum wage legislation in Guernsey include a minimum hourly wage for adults aged 19 and over, with provision to set different rates if required for young persons and apprentices.

On the matter of potential age discrimination, the Forum is aware that it is States of Jersey policy not to introduce any new legislation that may breach discrimination legislation in future. The Forum considered whether a student rate may be found to be indirectly age discriminatory on grounds that young people are more likely to be in full-time education than older people.

Whilst supporting the principles of a student rate, the Forum is aware that only 3 comments were received supporting a lower rate, from one large retail employer and 2 employers' associations. The Forum considers that more information is necessary to determine whether students are missing out on work experience opportunities, and if so, whether the minimum wage is a contributory factor in this.

**The Forum recommends that further consultation is undertaken during 2009 regarding the need for a student rate.<sup>[5]</sup>**

## Tips

Jersey's Minimum Wage Regulations state that in determining whether the minimum wage has been paid, all amounts 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, must not be taken into account.

The legislation creates the same situation as in the UK whereby tips paid through the payroll may be used by the employer to "top up" minimum wage pay and do not have to be paid to the employee on top of the minimum wage. JACS had commented on this practice during the Forum's 2006 minimum wage review, suggesting that the law should be revised. The Forum shared JACS concern and agreed that it appears contrary to the intention of the giver. However, in the process of considering how this might be addressed in the legislation, the Forum reached the conclusion that there is no simple solution to this matter.

Respondents were not asked for their views on practices regarding tips and gratuities in this 2008 minimum wage review, however JACS has commented again on the matter of tips and gratuities; *"we do not believe that any customer who tips, either in cash or via their payment card, intend that tip to be paid as part of the minimum wage through payroll. In our view such tips are intended to be an additional benefit to the staff who they believe provided good service. It is thought that some local employers adopt this practice, as do a number in the UK, where the practice has caused widespread condemnation from the unions. While it is recognised that this practice is legal (as long as the tips are paid through payroll) we would be pleased to see a change in the Regulations that specifically prevented this from happening."*

The Institute of Directors noted in their response that *"currently, the UK government allows non-cash tips to be used to top up waiting staff's basic pay to meet the national minimum wage. This is currently under review."* The response did not give a view as to whether this practice should be allowed to continue or what its response would be if the Forum were to recommend that tips and gratuities should not be allowed to be included as minimum wage pay.

The Forum notes that the UK Government intends to release a public consultation regarding tips and the minimum wage in 2008. This has been prompted by an Employment Appeal Tribunal Case this year– Her Majesty's Revenue and Customs -v- Annabel's Restaurant – where the Judge ruled that where service charges are paid by the customer to the employer, but are then paid into a "tronc" (a system for pooling and distributing tips), the money cannot be counted as minimum wage payments. Unite the union have been campaigning in the UK, targeting the Hospitality industry to ensure that staff are paid at least the minimum wage and that tips and other gratuities are distributed to staff fairly in addition to their pay.

Whilst supporting the principle of ensuring that employees receive the full minimum wage, only 2 comments were received regarding tips, from JACS and the Institute of Directors. The Forum considers that more information is necessary regarding the payment, collection and distribution of tips and gratuities, and consultation is required with relevant industries, such as restaurateurs. The Forum considers that there are issues regarding enforcement of tips and their redistribution that would require further research as the issue is likely to be more complex than it appears.

**The Forum recommends that further consultation is undertaken during 2009 regarding tips, gratuities and service charges.**

### Next minimum wage review

In 2006, the Forum expressed an intention to review the minimum wage every 2 years, instead of annually, unless there were circumstances, such as economic changes, to suggest that an earlier review is necessary.

Given the current economic climate, the Forum proposes that it is necessary to review the minimum wage again during 2009 to allow it to consider any effects of the unstable economy, implications of GST, rising costs of products and services, especially fuel and food, as well as inflation and the performance of the Agriculture and Hospitality industries in particular.

The Forum agreed that 3 specific matters raised in this review require further consultation; the structure of the offsets, a student or youth rate and tips and gratuities; and that they are of sufficient importance that consultation should not wait for a further 2 years.

Only one response was received from a Trade Union, Unite the Union. The Forum considers that Unite's suggested minimum wage of £10 per hour is unreachable for the industries in which minimum wage employees are most likely to be employed. The Forum considers that a more realistic view from employees and employee representative bodies will be necessary in next year's review and intends to seek new methods of encouraging employees to respond individually, or in groups, to the consultation.

**The Forum recommends that, as well as reviewing the offsets, a student rate and practices regarding tips during 2009, the minimum wage should also be reviewed in light of economic circumstances before a new rate for April 2010 is recommended.**

### CONCLUSION

The proposed 4.8% increase in the minimum wage is a little above the annual increase in the June 2008 average earnings increase in order to benefit those employees who have to cope with the increasing costs of supplies and services; but is far lower than last year's increase, and is lower than the annual increase reported in the June 2008 Retail Prices Index. The Forum appreciates the concerns of employers and has balanced this with equivalent increases in the offsets.

There has been continued growth in the economy, including in the Agriculture and Hospitality industries and the Forum considers that the move to 40.5% of the weekly average earnings is appropriate at this time; however the minimum wage rate and the uprating formula should be reviewed again in 2009 when there may be a clearer indication of any impact of economic decline.

### SUMMARY OF RECOMMENDATIONS FOR 1ST APRIL 2009

	1st April 2006	1st April 2007	1st April 2008	<b>1st April 2009</b>
Minimum Wage	£5.24	£5.40	£5.80	<b>£6.08</b>
Trainee Rate	£3.94	£4.05	£4.35	<b>£4.56</b>
Accommodation offset	£57.32	£59.10	£63.47	<b>£66.52</b>
Accommodation and food offset	£76.43	£78.80	£84.63	<b>£88.69</b>

### APPENDIX 1

#### Minimum wages as a percentage of average wage in other jurisdictions

	% of average wage		% of average wage
Australia	48.72	New Zealand	52.55
Belgium	47.5	Poland	34.97

Bulgaria	50.7	Romania	33.06
Canada	36.55	Slovakia	37.16
Czech Republic	38.21	Slovenia	43.25
France	50.42	Spain	36.04
Greece	64.83	Turkey	51.55
Japan	25.4	UK	39.99
South Korea	23.43	USA	33.91
Latvia	39.74	<b>Total</b>	<b>822.8</b>
Lithuania	34.82	<i>Average of all countries listed</i>	<i>41.14</i>



## Response to the Employment Forum's Minimum Wage Recommendation

Issued by the Minister for Social Security on 1st December 2008

### Background

The Employment Forum was established in August 1999 and its role and responsibilities were formalised in the Employment (Jersey) Law 2003, which came into force on 1st July 2005. The Forum has a duty to monitor the economic impact of the Minimum Wage and to make recommendations to the Minister for Social Security regarding any future increases. If the Minister decides to not to accept the Forum's minimum wage recommendations, he must provide a statement to the States explaining his reasons for that decision.

The Forum consulted on the minimum wage during July and August 2008 and presented its recommendations to the Minister for Social Security on 30th October 2008.

### Summary

The Minister accepts the recommendations of the Employment Forum to increase:

- the minimum wage;
- the trainee rate; and
- the maximum amounts that may be offset for accommodation and food.

The Minister intends to request that the required legislation is drafted as soon as possible. This will enable draft Regulations increasing the offsets to be proposed to the States early in 2009, to come into force on 1st April 2009.

	1st April 2008	1st April 2009
Minimum Wage	£5.80	<b>£6.08</b>
Trainee Rate	£4.35	<b>£4.56</b>
Accommodation offset	£63.47	<b>£66.52</b>
Accommodation and food offset	£84.63	<b>£88.69</b>

The Minister understands that the Forum was not in a position to make recommendations on some specific issues raised during consultation given the lack of evidence available.

- the structure and boundaries of the offsets;
- the need for a student rate;
- procedures regarding tips, gratuities and service charges; and
- a minimum wage for April 2010 in light of uncertain economic circumstances.

The Minister notes that a new Minister for Social Security may be in place by 2009 and so proposes that this recommendation should be reconsidered next year in view of other pressures on the workload of the Forum.

### Minimum wage

The Forum recommended a minimum wage of £6.08 per hour to apply from 1st April 2009.

The Minister accepts the recommendation and would intend that, subject to the States approval of the draft Regulations to increase the maximum offsets, the minimum wage would be increased by Ministerial Order. The Minister however appreciates that a new Minister for Social Security might be in place by the time the Order is required.

The Minister understands that the proposed 4.8% increase in the minimum wage is greater than the average earnings increase for the year to June 2008, but is lower than the Retail Prices Index increases throughout 2008. The Minister notes that the new rate would compare favourably with rates being paid in other jurisdictions; £5.73 in the UK from this October (a 3.8% increase), and £6.00 per hour (a 7.1% increase) in the Isle of Man from this October.

As demonstrated by the table on page 10 of the Forum's recommendation, there is only a small difference between each of the methods and indices that might have been applied by the Forum to set a new minimum wage, ranging from £6.00 to £6.12 per hour. The Minister appreciates that there is no one correct method of increasing

minimum wages. Given that the minimum wage has been increased by 13.5% in total over 3 years compared to average earnings increases over those 3 years totalling only slightly less at 13.3%, the Minister considers that on this occasion it is not unreasonable to increase the percentage of the weekly average wage used in the formula from 40% to 40.5%.

The Minister would however welcome the further consultation proposed by the Forum during 2009 before it recommends new rates for April 2010 given the current uncertain economic climate.

### **Trainee rate**

The Forum recommended a trainee rate of £4.56 per hour (which is 75% of the proposed minimum wage rate).

The Minister accepts the recommendation and would intend that, subject to the States approval of the draft Regulations to increase the maximum offsets, the trainee rate would be increased by Ministerial Order. The Minister however appreciates that a new Minister for Social Security might be in place by the time the Order is required.

### **Offsets**

The Forum recommended a maximum accommodation offset of £66.52 per week, and a maximum food and accommodation offset of £88.69 per week (a 4.8% increase to match the proposed minimum wage increase).

The Minister accepts the recommendation and intends to submit drafting instructions to the Law Draftsman's Office in order that the Regulations may be drafted and lodged for States debate early in 2009.

The Minister is aware that a new Minister for Social Security might be appointed who does not accept the Forum's recommendations; however the lodging of draft Regulations proposing the increased offsets will allow a new Minister to progress the minimum wage increases without delay if he or she wishes, whilst giving employers as much notice as possible of the new rates. If a new Minister did not agree with the Forum's recommendations, the Proposition may be withdrawn.

### **Further consultation**

The Forum recommended that further consultation should be undertaken during 2009 on a number of issues. The Minister understands that the Forum was not in a position to make recommendations given a lack of evidence on these particular matters and that it wishes to consult more widely amongst employers and employees:

- The structure and boundaries of the offsets.

Some respondents questioned whether the offsets could be more flexible, particularly in relation to meals provided to employees, Good and Services Tax on those meals, and permissible offsets for other benefits in kind provided to employees. If additional flexibility were to be recommended by the Forum next year, the Minister is keen that this should be consulted upon thoroughly, as the purpose of strictly limiting and defining the offsets was to protect employees from exploitation.

- The need for a student rate.

The Minister notes that the Forum supports the principles of a student rate, but appreciates that only 3 respondents supported a lower rate; one large retail employer and 2 employers' associations. More information is necessary to determine whether students are missing out on work experience opportunities, and if so, whether the minimum wage is a contributory factor in this.

- Tips, gratuities and service charges.

The Minister notes that since the Forum's recommendation was issued, the UK Government has released its consultation regarding tips and the minimum wage<sup>[6]</sup>. Whilst supporting the principle of ensuring that employees receive the full minimum wage, only 2 comments were received regarding tips, from the Jersey Advisory and Conciliation Service and the Institute of Directors. The Minister would agree that more information is necessary about existing procedures for the payment, collection and distribution of tips and gratuities.

- A minimum wage for April 2010 in light of uncertain economic circumstances.

The Minister understands that the Forum will request advice from statistical and economic experts again in 2009 in order to assess any changes in the economy. Since economic conditions outside Jersey have deteriorated significantly, it is possible that Jersey will face a slowdown in the economy in the next 18 months and the competitiveness of local business must be taken into consideration.

The Minister would welcome the search for evidence to better inform this recommendation for further

consultation next year; however he notes that, as the Forum is required to consult and make recommendations under the direction of the Minister for Social Security, whomever is the Minister for Social Security in 2009 should have the opportunity to consider this particular recommendation next year in view of other plans and pressures on the workload of the Forum.

## **Explanatory Note**

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These Regulations increase, by 4.8%, the maximum amounts that may be taken into account, when calculating a person's total remuneration, for the provision by the person's employer of living accommodation, whether with or without food. The amounts were last increased on 1st April 2008.





Jersey

# **DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 5) (JERSEY) REGULATIONS 200-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

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

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## **1 Regulation 9 substituted**

For Regulation 9 of the Employment (Minimum Wage) (Jersey) Regulations 2004<sup>[2]</sup> there shall be substituted the following Regulation –

**“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 £88.69 per week or £12.67 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 £66.52 per week or £9.50 per day.”.

## **2 Revocation**

The Employment (Minimum Wage) (Amendment No. 4) (Jersey) Regulations 2008<sup>[3]</sup> are revoked.

## **3 Citation and commencement**

These Regulations may be cited as the Employment (Minimum Wage) (Amendment No. 5) (Jersey) Regulations 200- and shall come into force on 1st April 2009.

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[1] <http://www.gov.je/ChiefMinister/Statistics/News/GVA+and+GNI+2007.htm>

[2] *All figures are based on June 2008 statistical reports. The Forum notes that the RPI increase for the 12 months to September 2008 was 6.4% (which would give a minimum wage of £6.17) and RPI(Y) increased by 4.9% in that period (which would give a minimum wage of £6.08).*

[3] *RPI(Y) excludes the cost of house purchase and the effect of indirect taxes such as GST.*

[4] [www.gov.je/NR/rdonlyres/E4AA453E-2E55-4A2A-B3C0-D6550BF3CA74/0/Direction200801AccommodationsuppliedunderacontractofemploymentMarch2008.pdf](http://www.gov.je/NR/rdonlyres/E4AA453E-2E55-4A2A-B3C0-D6550BF3CA74/0/Direction200801AccommodationsuppliedunderacontractofemploymentMarch2008.pdf)

[5] *A Health and Social Services Green Paper of October 2008 was presented to the States on 24th October in regard to the Children (Regulation of Employment) (Jersey) Order 200-. The draft will be subject to public consultation in January and February 2009. The draft Order would restrict the employment of children under age 16; however it could be extended to apply to children up to age 18 (which is the age of majority in Jersey). It is considered that the outcomes of that consultation will inform the Forum's further consultation on a student rate in 2009. Green Paper – [www.statesassembly.com/documents/reports/11064-42281-24102008.htm](http://www.statesassembly.com/documents/reports/11064-42281-24102008.htm)*

[6] <http://www.berr.gov.uk/consultations/page48902.html>

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[1] *chapter 05.255*

[2] *chapter 05.255.45*

[3] *R&O.22/2008*