

STATES OF JERSEY



MINIMUM WAGE: PROPOSED RATES

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

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to approve the intention of the Employment and Social Security Committee to make Orders under Article 16(3) of the Employment (Jersey) Law 2003, fixing the minimum wage rates, as follows –

- (a) an hourly minimum wage rate of £5.08, to apply to all employees over school leaving age, except when the trainee rate or youth rate is paid;
- (b) an hourly trainee minimum wage rate of £3.82 for an employee of any age who is undertaking accredited training for a maximum period of one year, when in a new job, with a new employer, by written agreement;
- (c) an hourly youth minimum wage rate of £3.82 for an employee between 16 and 18 years of age, i.e. between school leaving age and up to, but not including, age 18.

EMPLOYMENT AND SOCIAL SECURITY COMMITTEE

REPORT

Introduction

The minimum wage legislation is to be brought into effect through Part 4 of the Employment (Jersey) Law 2003, which the States has already approved and which has received Privy Council assent. The primary legislation requires certain Regulations and Orders to bring it fully into effect, most importantly the actual rates and how they are calculated.

In view of the importance attached to setting the initial rate of minimum wage, a considerable amount of research and consultation has been undertaken. This report summarises the outcome and makes recommendations to the States so that the draft Employment (Minimum Wage) (Jersey) Order 200-, at Annexe A, can be enacted.

Background

Part 4 of the Employment (Jersey) Law 2003 allows for minimum wage rates, including youth and trainee rates as appropriate, to be specified, and requires that all workers in Jersey are paid at an hourly rate which is equal to or greater than the minimum wage. Certain classes of employee are excluded from the minimum wage provisions, but this is limited to share fishermen, prisoners and people working on a voluntary basis.

Part 4 also formally establishes the Employment Forum and requires that when minimum wage rates are introduced and adjusted, these matters are referred to the Forum, and that following consultation, the Forum makes recommendations to the Committee. The Committee is not bound by these recommendations but must justify its reasoning if its proposals to the States are not in line with the recommendations.

The minimum wage system is intended to be very simple, but as there are so many different ways of paying wages, there has to be detailed legislation for calculating whether the minimum wage has been satisfied. Employers must provide information in pay statements and keep records for this purpose and employees have the right to access these records.

The Law enables a complaint to be made to the Tribunal for reasons relating to minimum wage, including; where the employer has paid less than the minimum wage and where the employer does not allow an employee access to their records. Compensation may be ordered to be paid where an employee has suffered detriment by reason of minimum wage and enforcement notices and fines may be served on employers, for not allowing access to records, not keeping records, falsifying records, or not paying the minimum wage.

Forum's rationale on the minimum wage rates

The full recommendation of the Forum was set out in R.C.1/2004, presented on 6th January 2004. The main conclusions on the minimum wage rates were:

Main rate

Taking guidance from the Low Pay Commission in the U.K., the Forum was aware that setting a higher minimum wage rate could make a more substantial difference to the low paid and a greater number of workers, but also that low-paid workers may not be helped if the rate recommended is so high that jobs are put at risk.

The Low Pay Commission advised that the initial minimum wage rate was set at a very cautious level in the U.K. and then gradually increased following assessment of the economic impact at each stage.

On the basis of the Forum's consultation, as outlined in Annexe B, the Forum concluded that, at the time of their deliberations in October 2003, a minimum wage rate of £4.80 was appropriate. This figure was updated to £5.08 by applying the expected uplift for inflation, to provide a rate for implementation in April 2005. The same method was used to obtain the trainee rate.

Trainee rate

The rationale for including a trainee rate was that it should act as an incentive to employers to train their employees, as long as the training related to a recognised course or qualification relevant to the job. This rate should be payable for a maximum of one year.

The Forum examined the U.K.'s 'Development rate' and the requirements in the Isle of Man's Minimum Wage Guidelines for establishing whether an employee's training is sufficient for them to be entitled to the lower rate of pay, including, for example, number of days training required during the trainee period. The U.K.'s Minimum Wage Regulations include a list of what qualifies as accredited training.

It was recognised that it might be difficult to define a 'trainee' for the purposes of minimum wage. Some employers might classify younger workers as trainees to justify paying them the lower rate unless there were strict rules on what qualifies an employee as a trainee. Enforcing such rules to ensure only 'genuine' trainees were paid at that rate could be expensive and difficult to enforce. It was agreed that guidelines or a code of practice approved by the Committee would be required to indicate what qualifies as accredited training.

On the basis of their consultation, as outlined in Annexe B, the Forum concluded that a rate of £3.60 was appropriate for October 2003, which was uprated to £3.82 by applying the expected uplift for inflation, to provide a rate for implementation in April 2005.

Youth rate

The Forum was split on the matter of a youth rate and did not make a recommendation. However, it was recognised that there may be a need for a youth rate in future if young people increasingly experience difficulty entering the labour market due to the shortage of jobs.

A case had been made for a youth rate by a number of contributors to the Forum's earlier consultation, including OXERA and the Jersey Hospitality Association. It had been suggested that not having a youth rate could be potentially damaging to the long term employment prospects of young people. Many local retailers currently have standard pay scales with lower rates for young workers, depending on age and length of service.

Consideration of the Forum's recommendation

Following publication of the Forum's full report, and taking account of the responses to it, the Committee was pleased to note the widespread support for the proposed minimum wage and trainee rates.

The Committee believes that it is important to introduce a minimum wage initially at a rate that will have limited economic impact, but at the same time make a difference to the lowest paid workers.

With regard to a youth rate, the Committee gave consideration to the current unemployment situation, and noted that nearly all of the responses received at the final stage of the consultation suggested that there should be a separate youth rate.

The Committee is of the view that the arguments are finely balanced – on the one hand the lack of equity if a young person does the same job as an adult but is paid at a lower rate, and on the other hand, the current employment climate and the fact that many local employers already pay lower rates to young workers. For these reasons, the Committee is proposing a youth rate, but restricted to those aged between 16 and 18 and to be introduced at the same level as the proposed trainee rate.

The Committee is therefore recommending these rates to the States. The economic impact will be carefully monitored and the whole system reviewed independently by the Employment Forum at the end of the first year to enable the system to develop and improve in time.

Financial/manpower implications

Funding for the infrastructure of the minimum wage has already been allocated and is partly in place through the establishment of the Jersey Advisory and Conciliation Service, and an Employment Tribunal which is shortly to

be set up to determine on the whole of the employment legislation.

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

DRAFT EMPLOYMENT (MINIMUM WAGE) (JERSEY) ORDER 200-

Made

[date to be inserted]

Coming into force

1st April 2005

THE EMPLOYMENT AND SOCIAL SECURITY COMMITTEE, in pursuance of Articles 16, 22, 33 and 104 of the Employment (Jersey) Law 2003 orders as follows –

1 Interpretation

In this Order, unless the context otherwise requires –

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

“the Law” means the Employment (Jersey) Law 2003;

“trainee” has the same meaning as it has in the Employment (Minimum Wage) (Jersey) Regulations 200-.

2 The minimum wage

- (1) The minimum wage for an employee (other than an employee to whom paragraph (2) or paragraph (3) applies) shall be an hourly rate of £5.08.
- (2) The minimum wage for an employee who is a trainee shall be an hourly rate of £3.82.
- (3) The minimum wage for an employee who has not attained the age of 18 years shall be an hourly rate of £3.82.

3 Pay reference period

For the purposes of the Law, a pay reference period shall be –

- (a) a period of one calendar month, where an employee is paid by reference to a period that is not shorter than one calendar month; or
- (b) where an employee is paid by reference to a period that is shorter than one calendar month, that shorter period.

4 Records to be kept by employers

- (1) If an employee qualifies for the minimum wage, his or her employer shall keep in respect of that employee records that are sufficient to establish in accordance with Regulation 6 of the Employment (Minimum Wage) (Jersey) Regulations 200- that the employer is remunerating the employee at a rate that is at least equal to the minimum wage.
- (2) The records shall be in a form that enables the information that is to be kept about the employee in respect of a pay reference period to be produced in a single document.
- (3) The records that must be kept under this Regulation shall be kept by the employer for a period of 10 years beginning with the day on which the pay reference period specified in paragraph (4) ends.

- (4) The pay reference period to which this paragraph refers is the one immediately following the pay reference period to which the records relate.
- (5) The records may be kept by means of a computer.

5 Maximum amount of compensation for detrimental treatment

The maximum amount of compensation that may be awarded under Article 33(1) of the Law shall not exceed the maximum amount of a payment that the Jersey Employment Tribunal may order under Article 86(6) of the Law.

6 Citation and commencement

- (1) This Order may be cited as the Employment (Minimum Wage) (Jersey) Order 200-.
- (2) This Order shall come into force on 1st April 2005.

FORUM'S CONSULTATION METHODS

Updating the Institute of Employment Studies research

The Committee commissioned an impact study to explore the potential impact of the introduction of a minimum wage, figures from which have been updated by IES and subsequently updated again by the Forum to suggest potential minimum wage rates for 2004/5.

“Setting the Minimum Wage” consultation

The Employment Forum issued a questionnaire to consult on the level at which the minimum wage should be set, which closed in September 2002. The questionnaire also included questions on a trainee rate, benefits in kind and method of updating.

OXERA report

In 2002, the Policy and Resources Department asked OXERA to undertake research and prepare a paper on the economic implications of the level and structure of the Minimum Wage. OXERA provided recommendations on various issues relating to the introduction of a minimum wage in Jersey.

Update meetings

The Forum held individual discussions with representatives of key industries affected by the proposals in September 2003. As it had been nine months since the Forum's consultation was carried out, these two groups, plus the TGWU who declined, were given the opportunity to provide an update.

Income Distribution Survey

In the majority of European countries, including the U.K., minimum wage rates are usually close to 50% of the median pay level. According to preliminary results from the Income Distribution Survey, 50% of the median equivalised, pre-benefit income for an adult living alone is £160 per week.

FORUM'S RATIONALE

The principles of minimum wage

The aim of introducing a minimum wage is to provide a package that takes account of business realities, but removes the worst cases of exploitation. The intention is to provide a minimum standard for wage levels, in the same way that other components of the Employment Law provide minimum standards in the employment relationship, including rest days, annual leave and notice entitlement.

Offset

The Forum was aware that many employers in the Island incur costs which make up general remuneration packages of employees. An offset for food was originally excluded from the proposed Jersey minimum wage system, but due to standard practices in the different industries, on a majority vote the Forum agreed to recommend a split for two benefits in kind; 75% for accommodation and 25% for food. If an employer does not provide food, just the offset for accommodation can be applied.

Currently, there are two industries in the Island that routinely provide accommodation to their staff, Hospitality and Agriculture. Both industries normally adhere to minimum standards which are negotiated, determined and communicated by their respective associations, the Jersey Hospitality Association and the Jersey Farmers' Union. The JFU provides accommodation guidelines, stating that the employer will provide adequate accommodation conforming to the 'Staff Accommodation and Lodging Houses Standards Code of Practice' (approved by the States in October 1991). The recommendation of this rate of offset for accommodation is based on the assumption that industry standards will be adhered to in the provision of decent accommodation.

Under the terms of an agreement between the JHA and the Transport and General Workers Union, where board

and lodgings are provided, the maximum sum of £57 per week can be deducted from a hospitality sector employee's wage. 99-100% of workers in the agriculture sector 'live in', so they operate a different system where on the rare occasions when a worker lives out, a higher rate of approximately £1.07 more per hour is payable.

Research carried out by the Forum has also highlighted the fact that the range, quality and type of accommodation can differ greatly. However, the Forum agreed that this aspect of the scheme should be simple and straightforward to enforce, and therefore not attract varying levels of offset based on quality. A complex system would create an administrative burden, requiring the establishment of an independent body to inspect and grade accommodation types and an appeals system to resolve any disputes.

Interaction between the minimum wage rate and the offsets

The Forum recognised the strong association between the minimum wage and the offsets. Various minimum wage rates were considered during a lengthy consultation process, including the suggestion of a lower minimum wage rate with a lower offset. It was agreed that in order to provide a decent wage for a fair days work for those who do not receive benefits in kind, a higher basic rate would be more appropriate. These workers on a low wage usually have to be able to afford to pay for accommodation, bills and food. Also, the higher accommodation rate is more in line with local accommodation prices.

Calculation of Hourly Rate

The Forum agreed that the method of calculating whether the minimum wage has been paid should be the same as the method outlined in the U.K., as there do not appear to have been any problems with this approach.