

STATES OF JERSEY

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DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 4)(JERSEY) REGULATIONS 200

Lodged au Greffe on 22nd November 2007
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 4) (JERSEY) REGULATIONS 200

REPORT

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 to increase the amounts that may be offset against the minimum wage via this amendment to the Minimum Wage Regulations. The Minister intends to subsequently increase the minimum wage rates by Order, by the same percentage of 7.4%, to be effective from 1st April 2008.

Background

The independent consultation body, the Employment Forum presented its recommendation to the Minister on 1st October 2007, which is attached at the Annex to this Report. The Minister accepted the recommendations in full on 3rd October 2007. In summary, the Forum recommended the following increases –

	1st April 2007	1st April 2008
Minimum Wage	£5.40	£5.80
Trainee Rate	£4.05	£4.35
Accommodation offset	£59.10	£63.47
Accommodation and food offset	£78.80	£84.63

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, which will be set by the Minister by Order, 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 2008, 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 **£63.47**.
- For the provision of both accommodation and food to the employee, the maximum weekly offset against the minimum wage would be **£84.63**.

Minimum wage rates

Subject to States approval of the proposed Regulations, the Minister for Social Security will make an Order under Article 16(3) of the Employment (Jersey) Law 2003, to apply the following rates from 1st April 2008–

- An hourly **minimum wage of £5.80**, to apply to all employees over school leaving age, except when the

trainee rate is paid, and 'special classes of person', as detailed in articles 36 to 43 of the Employment Law.

- An hourly **trainee rate of £4.35** 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.

Financial/manpower implications

There are no financial or manpower implications arising from the adoption of these Draft Regulations.

RECOMMENDATION – MINIMUM
WAGE RATES FOR APRIL 2008



Issued by the Employment Forum on 1st October 2007

PURPOSE OF RECOMMENDATION

This recommendation is a follow up to the Employment Forum's second review of the minimum wage, which was carried out in 2006. That review resulted in the recommendation of a formula by which the minimum wage should be increased both in 2007 and 2008. The purpose of this recommendation is to seek the Social Security Minister's approval for the minimum wage, trainee rate and offsets that result from that formula, to take effect from 1st April 2008.

SUMMARY

Section 1 – Background

Section 2 – Minimum wage rates in other jurisdictions

Section 3 – Recommendations

APPENDIX – Other Issues

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

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

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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 4 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 in all minimum wage rates, 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 may be set without a full public consultation. The intention was to give businesses a greater period of notice of any new rates. 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 of the previous year.

The Minister approved the Forum's recommendations for 2007 and 2008 and the resulting legislation came into force on 1st April 2007; the Employment (Minimum Wage) (Jersey) Order 2007 and the Employment (Minimum Wage) (Amendment No. 2) (Jersey) Regulations 2007.

SECTION 2 – OTHER JURISDICTIONS

Following a recommendation from the Low Pay Commission, the **UK** minimum wage rates will increase on 1st October 2007 as follows:

- Adult workers (22 and over) – up 17p to £5.52 (3.1% increase)
- Development rate (18-21 year olds) – up 15p to £4.60
- Development rate (16-17 year olds) – up 10p to £3.40
- Accommodation offset – up £1.05 to £30.10 per week

The **Isle of Man** minimum wage rates from 1st October 2007, as recommended by the Minimum Wage Committee, will be:

- Adult workers (18 and over) – up 20p to £5.60 per hour (3.7% increase)
- 17 year olds and certain trainees – up 19p to £5.24 per hour (3.8% increase)
- 16 year olds – up 17p to £4.67 per hour (3.8% increase)

Guernsey does not currently have a minimum wage, however public consultation has recently been undertaken to seek views on whether minimum wage legislation is required in Guernsey.

Adult rates in other jurisdictions include – Eire, £5.24; France, £5.56; US Federal rate £2.92; and New Zealand £4.29.

SECTION 3 – RECOMMENDATIONS

METHOD OF UPDATING

In view of comments received during the Forum's first minimum wage review in 2005, the Forum gave further consideration to the method of updating of the minimum wage in its 2006 review.

The Forum understood from responses received that Hospitality employers are the most likely to be negatively affected by a short period of notice between the announcement of new minimum wage rates and their subsequent enactment and took account of requests for the Forum to plan further ahead in making its recommendations.

The Forum had noted that the Low Pay Commission recommends minimum wage rates for two or three years in advance. The proposed rates are then approved by the Government nearer the time of updating, subject to consideration of any exceptional economic circumstances which suggest that the rate should not be as previously

recommended by the Commission.

In order to provide such a “two year deal”, the Forum recognised that a formula would be necessary by which rates may be proposed with a greater period of notice. In considering what formula to recommend, the Forum took into account other jurisdictions that on average provide a minimum wage that is at least 40% of the median wage income of those jurisdictions, based on a forty-hour week.

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 2006 Index measures changes in average earnings received between the last weeks of June 2005 and June 2006 and is designed to measure changes in average earnings by matching records in consecutive years from sampled firms.

The Forum recommended that the minimum wage from 1st April 2008 should be set by reference to 40% of the overall average weekly earnings, as released in the June 2007 average earnings statistics, subject to Ministerial approval of the resulting rate.

The Forum recommended that this formula should be used each year to recommend rates for the following April, subject to consideration (only where necessary) of factors which have had a major impact on the economy. Having regard to the Average Earning Index report, the Forum considers that there are no major factors necessitating a review of that recommendation or the formula prior to recommending rates for April 2008.

The Forum will assess the appropriateness of this method and the percentage of average earnings used in the formula via an internal review in approximately six months time, before the method is utilised to recommend a rate for 1st April 2009. Ideally, the Forum would aim to gradually increase the percentage of the average wage used in the formula towards 45% over the coming years, if the States of Jersey wishes to raise the bottom end of earnings.

MINIMUM WAGE

The average weekly earnings for full-time equivalent employees in Jersey in June 2007 was £580 per week. Forty per cent of this weekly wage equates to a minimum wage of £5.80 per hour, based on a forty hour week.

As the Forum’s previous recommendation was for an increase equivalent to 40% of average weekly earnings, this results in a higher minimum wage than would have been recommended if the 4.7% average earnings increase figure were applied (£5.65).

The Forum noted that neither figure is incorrect. The difference in the resulting minimum wage increase results from “rounding” and due to the method of preparing the average weekly earnings figure, whereby individual employers’ returns are compared year on year. So, depending on which employers return data, a different mixture of employers might then be used to create the final weekly earning figure. The figure is stated in the average earnings report^[1] as a reasonable approximation, with an uncertainty of approximately £20.

The Forum recommends a minimum wage of £5.80 to apply from 1st April 2008.

TRAINEE RATE

Responses to the Forum’s 2006 review suggested that the trainee rate should not be increased significantly above or below any increase in the minimum wage. The Forum considered that, as a specific method for uprating the minimum wage for two years was proposed, it would be appropriate to return to the initial method of setting the trainee rate, which is 75% of the full minimum wage rate for 2008, as set by the formula specified above.

The Forum recommends a trainee rate of £4.35.

OFFSETS

The Forum recommended that the accommodation and food offsets should be increased proportionately to the minimum wage rate (**a 7.4% 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 £63.47, and a food and accommodation offset of

£84.63.

SUMMARY OF RECOMMENDATIONS FOR 1ST APRIL 2008

	1 st April 2006	1 st April 2007	1st April 2008
Minimum Wage	£5.24	£5.40	£5.80
Trainee Rate	£3.94	£4.05	£4.35
Accommodation offset	£57.32	£59.10	£63.47
Accommodation and food offset	£76.43	£78.80	£84.63

APPENDIX – OTHER ISSUES

A number of issues were raised during the 2006 review of the minimum wage and following are details of the progress that has been made in regard to the Forum's recommendations. This section does not form part of the minimum wage recommendations for 2008.

Work Experience

The Forum recommended that where students are undertaking a "work experience placement" as an educational requirement within an academic establishment, or as a requirement of a full time training course, they should not be "employees", and therefore not entitled to the minimum wage or the trainee rate.

The 2007 Minimum Wage Order states that; for the avoidance of doubt, the minimum wage and trainee rates do not apply, "*in respect of work undertaken by a person on behalf of another person where the work is being undertaken to gain experience as a required part of a course of education at an academic establishment.*"

Youth Rate

The Forum had proposed that the introduction of a youth rate would enable it to consider recommending that the minimum wage should be increased by more than average earnings in the future, as it would help to avoid the possible negative consequences on labour market opportunities for young people.

The Forum notes that its recommendation for a youth rate, payable to employees aged 16 to 18 in full time education, was rejected by the States of Jersey and was therefore not implemented.

Accommodation and Food

It was suggested to the Forum during the 2006 review that some employers were charging two thirds of the food element of the offset due to difficulties in providing a midday meal due to the location of their employees, plus other employers wanted to charge only the food element of the offset (e.g. cafes) where accommodation was not provided.

The Forum appreciated that the food offset might be open to abuse and wished to ensure that employers were made aware that the legislation does not allow an offset for food where accommodation is not provided, or a reduced offset where only two meals per day are provided.

The latest version of the JACS guide to the Minimum Wage clarifies this, by stating 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.*"

Trainee Rate and Offsets

It came to the attention of the Forum during the consultation process that it is possible for employers to offset an amount for accommodation and food against the trainee rate. The Forum considered that this is too low a wage to offset against and employers should be prevented from doing so.

This has been achieved in the Employment (Minimum Wage) (Amendment No. 2) (Jersey) Regulations 2007 which state that the Regulation referring to the offsets does not apply to trainees.

Utilities Bills

Concern had been raised regarding some employers charging for electricity and fuel in addition to the offset for accommodation. The Forum considered that this practice is contrary to the purpose of the Forum's original recommendation that only two offsets may be charged against the minimum wage.

The JACS guide to the Minimum Wage now states that; *"No other form of benefit (e.g. utilities bills) can be taken into account in determining whether the Minimum Wage has been satisfied."*

Pay Slips

The Forum recommended, based on comments received, that employers should be obliged to provide employees with detailed pay-slips, rather than employees having only a "right" to ask for a pay-slip under Article 51(1) and (2) of the Employment (Jersey) Law 2003. The Forum encouraged an appropriate amendment to the Employment Law to ensure that employers must give pay slips to their employees, rather than only when they requested by the employee.

This will be achieved via the Employment (Amendment No. 3) (Jersey) Law 200, which provides that; *"An employee must be given by his or her employer, at or before the time at which any payment of wages is made to the employee, a written itemised pay statement."* The amendment was adopted by the States on 18th April and is anticipated to come into force shortly, subject to Privy Council approval.

Record of hours worked

The Forum also suggested that employers should be required to record each employee's actual and contractual hours worked on Social Security contribution schedules, so that it is easy to identify the actual hours worked by that employee in each pay reference period.

This has been achieved via the 2007 Minimum Wage Order, which states that records kept for minimum wage purposes; *"must show the actual number of hours worked by the employee during each pay reference period (and not just the contractual hours worked)"* and this is also referred to in the JACS guidance notes.

Variable Hour Contracts

The Forum understood from JACS that "pay reference periods" had raised problems where some employers pay their staff a regular weekly wage, but operate a "variable hour" system over a monthly period. As staff are paid weekly, the employer is in breach of minimum wage law in weeks where the employee has worked more than 42 hours, despite the fact that over the period of one month, the total pay is sufficient for the hours. Both employers and employees were said to be satisfied with this arrangement but do not wish to breach the law.

The Forum suggested that the Minimum Wage Order could be amended to provide the flexibility to allow the pay reference period for weekly paid employees to be averaged over "one calendar month", if agreed by the employer and employee in a relevant agreement. This amendment was included in the 2007 Minimum Wage Order.

Therapeutic Work

Therapeutic work had been raised as a matter requiring future consideration in a previous Minimum Wage review conducted by the Forum, however since the Employment Law has been in force, the Forum understands from JACS and the Social Security Department that only a handful of queries have been received about therapeutic workers, most of which have related to the relationship between benefit entitlements and the right to receive the minimum wage.

The Forum understands that the issue must now be consulted upon further due to a States Proposition (P.141/2007) lodged by Deputy Ian Gorst, which is due for debate on 9 October. The Proposition requests that the Social Security Minister amends the Employment Law to ensure that therapeutic workers are not disadvantaged by the provisions of the Employment Law, particularly the Minimum Wage, and that the Employment Forum is directed to consult on the matter.

Re-issue Note

This project is re-issued because the Annex to the Report was omitted from the original publication.

Explanatory Note

These Regulations amend the Employment (Minimum Wage) (Jersey) Regulations 2004 (“the principal Regulations”).

Article 1 substitutes Regulation 9 of the principal Regulations so as to increase certain amounts that an employer must take into account or not take into account, as the case may be, when calculating whether the minimum wage has been paid. Where the employer has provided food and living accommodation, the amount is increased from £78.80 per week or £11.26 per day to £84.63 per week or £12.09 per day. Where the employer has provided accommodation only, the amount is increased from £59.10 per week or £8.44 per day to £63.47 per week or £9.07 per day.

Article 2 provides for the citation of the Regulations and that they will come into force on 1st April 2008.



Jersey

DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 4) (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^[1], have made the following Regulations –

1 Regulation 9 substituted

For Regulation 9 of the Employment (Minimum Wage) (Jersey) Regulations 2004^[2] there is 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 £84.63 per week or £12.09 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 £63.47 per week or £9.07 per day.”.

2 Citation and commencement

- (1) These Regulations may be cited as the Employment (Minimum Wage) (Amendment No. 4) (Jersey) Regulations 200-.
- (2) These Regulations come into force on 1st April 2008.

[1] www.gov.je/NR/rdonlyres/9A926368-531C-464D-A1DC-3A77B84E9259/0/AEIReleaseJune2007.pdf

[1] *chapter 05.255*

[2] *chapter 05.255.45*