

STATES OF JERSEY



DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 8) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 28th October 2011
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 8) (JERSEY) REGULATIONS 201-

REPORT

Introduction

Jersey's minimum wage has been in force since 1st July 2005. On the basis of the Employment Forum's latest recommendation, the Minister for Social Security proposes this amendment to the Minimum Wage Regulations that would amend the maximum amounts that may be counted towards minimum wage or trainee rate pay where food and living accommodation are provided.

Subject to the States' approval of these draft amending Regulations, the minimum wage and trainee rate would be increased by Ministerial Order, to be effective from 1st April 2012.

Background

The independent consultation body, the Employment Forum, publicised its minimum wage recommendation on 27th September 2011 (attached at the Appendix to this Report) which recommended that the minimum wage and associated rates should be amended from 1st April 2012, as follows –

	2011	2012
Minimum Wage (per hour)	£6.32	£6.48
Trainee Rate (per hour)	£4.74	£4.86
Maximum weekly offset against minimum wage for accommodation	£69.21	£70.94
Maximum weekly offset against minimum wage for accommodation and food	£92.27	£94.58
Maximum weekly offset against trainee rate for accommodation	£69.21	£53.21
Maximum weekly offset against trainee rate for accommodation and food	£92.27	£70.94

The Minister approved the Forum's recommendation on 20th October 2011.

Offsets against the minimum wage

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.

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 2012, 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 **£70.94**.
- For the provision of both accommodation and food to the employee, the maximum weekly offset against the minimum wage would be **£94.58**.

Offsets against the trainee rate

The Minister also accepted the Forum's recommended change to the maximum value that may be attributed to the offsets where the trainee rate is paid.

This proposed amendment to the Regulations would permit an employer to offset a maximum of 75% of the weekly offsets against trainee rate pay from 1st April 2012 –

- For the provision of accommodation to the employee, the maximum weekly offset against the trainee rate would be **£53.21**.
- For the provision of both accommodation and food to the employee, the maximum weekly offset against the minimum wage would be **£70.94**.

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 2012 –

- An hourly **minimum wage of £6.48**, 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 £4.86** 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 and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

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Issued by the Employment Forum on 27 September 2011

PURPOSE OF RECOMMENDATION

This is the Employment Forum's seventh minimum wage recommendation to the Social Security Minister. The Forum has consulted people who may be affected by the minimum wage, including employers and employees, and has considered relevant statistics and data about the economy. The Forum has reviewed the minimum wage rate, the amounts that may be offset against the minimum wage where meals and accommodation are provided, and the conditions relating to the trainee rate. The main purpose of the recommendation is to recommend a minimum wage rate to take effect from 1 April 2012 so that the Minister may decide whether to accept the recommendation before proposing any necessary changes to the Law.

SUMMARY

Section 1 – Background

Section 2 – Minimum wages in other jurisdictions

Section 3 - Consultation and data

Section 4 – Recommendations

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/minimumwage

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

Telephone: 01534 447203
Fax : 01534 447446
Email: E.Forum@gov.je

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

David Robinson - Chair
Helen Ruelle – Deputy Chair
Carol Le Cocq
Jeralie Pallot
Thomas Quinlan
Barbara Ward.

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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 provided for the introduction of a minimum wage and trainee wage, and the establishment of an independent body (the Employment Forum) which would act as a consultative body to make recommendations to the former Employment and Social Security Committee.

The Employment Forum's first Minimum Wage Recommendation was issued in October 2003. In July 2004, the States of Jersey approved the subordinate legislation required to bring the minimum wage into force under the Employment Law on 1 July 2005.

Previous Consultation and Recommendations

Full details of the Forum's previous consultations and recommendations on the Minimum Wage are available on the website www.gov.je/minimumwage.

The minimum wage rates that have been implemented on 1 April each year since 2005 are shown in the table below.

	2005	2006	2007	2008	2009	2010	2011
Minimum Wage (per hour)	£5.08	£5.24	£5.40	£5.80	£6.08	£6.20	£6.32
Trainee Rate (per hour)	£3.82	£3.94	£4.05	£4.35	£4.56	£4.65	£4.74
Accommodation offset (per week)	£55.65	£57.32	£59.10	£63.47	£66.52	£67.85	£69.21
Accommodation and food offset (per week)	£74.20	£76.43	£78.80	£84.63	£88.69	£90.46	£92.27

Summary of 2010 Minimum Wage Recommendation

The Forum consulted during July to August 2010 and received 48 written responses from a representative range of respondent types and industries. This compared favourably with responses received during the previous minimum wage review.

Similarly to previous minimum wage reviews, respondents generally did not oppose a realistic or minimal increase in the minimum wage, but did oppose a significant or unmanageable increase on the basis that it would jeopardise businesses and jobs.

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There were also concerns about political influence on the minimum wage shortly before the implementation of new rates, as occurred in March 2010; employers wanted greater certainty in the rate that is announced.

The Forum has a statutory duty to consider competitiveness, jobs and the economy, in making its recommendations to the Social Security Minister, and must have regard to the States objective (agreed in 2010) that the minimum wage should be set at 45 percent of average earnings within a period of 5 to 15 years.

The Forum balanced the concerns of employers against the need for an increase in wages, continuing to be cautious of triggering redundancies.

Taking into account the evidence available - the low expectation of wage increases in 2010, the relatively low level of RPI inflation over 2009/10, the weak labour market, increasing unemployment and low average earnings growth in 2010 - the Forum recommended that the adult minimum wage should increase by 2 percent. This gave a minimum wage of £6.32 to apply from 1 April 2011. The Forum recommended that a 2 percent increase should also be applied to the offsets and that the trainee rate should continue to represent 75 percent of the minimum wage.

The Forum considered that the economic outlook for 2011 was not sufficiently clear to enable a recommendation to be made beyond April 2011 and agreed that it would be necessary to review economic evidence and the minimum wage again during 2011.

Youth rate

The previous minimum wage consultation had not revealed sufficient evidence to justify a lower youth rate and the Forum had therefore recommended that a youth rate should not be introduced. The Forum was concerned that the introduction of a youth or student rate could have a detrimental effect on young people who already have job if their employer reduces hourly pay to the new lower rate, particularly students and young people who are supporting themselves.

The 2010 review requested comments to assist in determining whether young people are missing out on work experience opportunities in any particular industries, whether young people are willing to work for a lower rate of pay, and whether employers would be more willing to employ younger people at a lower rate of pay. The Forum also asked young people on the Advance to Work Scheme to complete a targeted survey and received 34 responses.

There was some support for a youth rate, in particular from employers, the Jersey Hospitality Association (JHA) and Jersey Advisory and Conciliation Service (JACS). However, the Forum concluded that the consultation had not revealed sufficient evidence that the requirement to pay the minimum wage is a factor in youth

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unemployment, or that the availability of a lower rate would impact on employers' or young employees' behaviour sufficiently.

The Forum decided that specific evidence would be required showing whether a youth rate would improve opportunities for young people, as well as consideration of the wider effects, such as the displacement of existing older staff.

Trainee rate

The public meeting and written responses in 2010 revealed that some employers do not understand what criteria must be met to allow the trainee rate to be paid, as well as a perception that the 'Trainee Rate' code of practice (which sets out the criteria) is not sufficiently flexible. The Forum recommended that the code of practice would benefit from a review in the future. This is discussed in more detail in Section 4, below.

Offsets

The review in 2010 did not include any specific questions about the offsets; however, as in previous years, the JHA had asked the Forum to reconsider a 'food only' offset. The Forum decided that, if a 'food only' offset were to be considered, evidence and opinions would be required from those who would be affected, such as restaurateurs. This is discussed in more detail in Section 4, below.

SECTION 2 – OTHER JURISDICTIONS

UK

A 2.5 percent increase will be applied to the adult minimum wage from 1 October 2011;

- Adult rate (age 21+) to increase from £5.93 to £6.08 per hour

The Low Pay Commission (LPC) said that it was taking account of "*the continued economic uncertainty while protecting the lowest-paid workers from falling further behind the average*". Despite calls from representatives of employers to freeze the minimum wage, the LPC recommended an increase to the adult rate in line with average earnings growth, both recent and anticipated.

- 18-20 years olds 'development rate' to increase from £4.92 to £4.98 per hour
- 16-17 year old rate to increase from £3.64 to £3.68 per hour
- An increase from £2.50 to £2.60 per hour for apprentices who are either under 19 or in the first year of their apprenticeship.
- Maximum accommodation offset to increase from £31.57 to £32.27 per week.

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Isle of Man

The Isle of Man's Minimum Wage Committee has recommended increasing the minimum wage for workers aged 18 or over from £6.10 to £6.20 per hour from 1 November 2011. This represents a 1.6 percent increase. The Committee has also recommended that all other rates should remain unchanged. The Isle of Man government will consider the proposed increase in October 2011.

The maximum accommodation offset will remain at the 1 April 2010 rate; a maximum of £38.50 per week. All other rates remain at the rates that have applied since October 2007;

- Age 16 – £4.67 per hour
- Age 17– £5.24 per hour
- Age 18+ within the first 6 months of employment with his or her employer and receiving training accredited by the Department of Economic Development - £5.24 per hour.

Guernsey

Guernsey introduced a minimum Wage on 1 October 2010. Following public consultation in 2011, the Commerce and Employment Department proposed a 2.5 percent increase in rates from October 2011 and the States of Guernsey has approved the increase;

- Adult minimum wage (age 19+) - £6.00 increasing to £6.15 per hour
- Young persons' rate (age 16-18) - £4.25 increasing to £4.36 per hour

A 2.5 percent increase will also apply to the maximum amounts that an employer is permitted to offset against the minimum wage from 1 October 2011;

- Accommodation - £60 increasing to £61.50 per week
- Accommodation with food - £85 increasing to £87.13 per week

Workers may "opt out" of the food provision in which case minimum wage calculations will only be based on the accommodation offset. If an employer treats a worker less favourably when they "opt out" of food this may be considered detrimental treatment.

Apprentices over age 19 are not entitled to the minimum wage for the first year of their apprenticeship. Apprentices under age 19 are not entitled to receive the young persons' rate.

The States decided that the young person's minimum wage rate and the adult minimum wage rate should be equalised as soon as possible, however, the

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Commerce and Employment Department does not intend to equalise the two the rates at the present time.

The 2.5 percent increase was calculated according to the Department's preferred method, using Guernsey's Retail Prices Index. During their July 2011 meeting, the States debated a proposition to change to the way the minimum wage rate is calculated but voted not to do so. A Guernsey States Deputy has stated that he intends to propose that the minimum wage should be increased to 40 percent of Guernsey's average salary by 2014 and to 45 percent of average salary by 2020.

International minimum wages

The Low Pay Commission reported that in three countries there was no minimum wage increase between 2009 and 2010: the United States, Greece and Ireland. Greece and Ireland have reviewed their minimum wage arrangements in the context of difficult economic circumstances. In Greece, the minimum wage has been frozen in 2010 and the age for entitlement to the full adult minimum wage has been raised from 15 to 25. There has been no rise in the Irish minimum wage since 2007 and the Irish Government has announced that the hourly rate is to be reduced by €1 from February 2011, a reduction of about 11.5 per cent.

The Forum notes that the LPC recommends caution when drawing comparisons between countries because there are differences in what counts towards the minimum wage, the age at which the minimum wage rate applies, the coverage of the minimum wage and exemptions. In addition, the comparisons are not standardised and minimum wage uprating dates vary.

The **median** average wage is used as standard to make minimum wage comparisons across jurisdictions, rather than the **mean** which is usually higher than the median when the same data is used. The Employment Forum has in previous recommendations compared proposed minimum wage rates with 40 percent of the **mean** average weekly earnings, as released by the Jersey Statistics Unit. The median figure is available from the Statistics Unit for the first time this year. Jersey's current minimum wage of £6.32 represents 48.6 percent of the median average weekly earnings in June 2011.

The table at Appendix 1 shows adult minimum wages relative to **median** earnings, by country.

SECTION 3 – CONSULTATION AND DATA - 2011

Full details of the Forum's previous consultations and recommendations on the minimum wage are available on the website www.gov.je/minimumwage.

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Consultation method

The Forum consulted during the period 17 June to 12 August 2011. A background document and two surveys were released; one survey was suitable for all types of respondents, (employers, employees, trade unions, employers' associations, independent bodies, etc). The second survey was designed specifically for minimum wage earning employees and was also available in Polish and Portuguese. The review was distributed to those on the Forum's consultation database (approximately 250 in total), which includes a wide cross section of respondents.

As in 2010, the surveys were also available to be completed in an online version and again this method proved to be the most popular. Notifications of the review were placed on the government website homepage and in the Social Security Department. Flyers advertising the review were circulated to States members and approximately 3,400 employers.

Young people on the Advance to Work scheme and adults on the Advance Plus scheme were targeted via their mentors and were asked to complete a separate survey. These schemes were set up by the States to assist unemployed teenagers and adults through the economic downturn, providing unpaid work experience placements combined with vocational and key skills training, to act as a stepping stone into paid employment.

The Forum received 72¹ written responses from a range of respondents and industries. The Forum received more responses from employers than in previous years but only 10 responses from employees; 5 employees responded to the survey designed for minimum wage earning employees, and 5 employees responded to the general survey.

	2008	2009	2010	2011
Employee	2	6	23	10
Employer	9	10	11	16
Employer association	4	2	2	2
Trade union/staff association	1	1	0	1
Other ²	2	5	12	7
Advance to Work young people	-	-	34	36

¹ In its 2011 consultation, the UK's Low Pay Commission received 80 written responses.

² The 7 'other' responses include an advisory service, members of the public, a prospective employer and a member of the Jersey Skills Board.

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Thirty-six responses were received from people on the Advance to Work and Advance Plus Schemes (ATW). Two-thirds were aged 16 to 19 and the remainder were aged 20 to 59. Two thirds of those who responded have a work placement as part of the scheme.

A public meeting was held on 19 July 2011 which was attended by a range of interested parties. The views discussed during the public meeting have been considered in detail by the Forum and have informed this recommendation.

The States Economic Adviser and Chief Statistician provided evidence in person to the Forum on 7 September 2011 allowing the latest economic outlook and statistics to be reviewed.

Prices

The Retail Prices Index (RPI) is the main measure of inflation in Jersey. It measures the change from quarter to quarter in the price of the goods and services purchased by an average household in Jersey.

During the twelve months to June 2011, the All-Items RPI increased by 4.5 percent. This annual rise was driven by the 2 percent increase in the rate of GST on 1 June 2011, accounting for 1.3 percentage points of the increase in the RPI. RPI Pensioners and RPI Low Income increased by 4.5 percent and 4.4 percent, respectively, over the twelve months to June 2011.

Underlying inflation is measured by RPIX³ and RPIY. RPIX increased by 4.4 percent over the twelve months to June 2011, the key upward driver being the increase in the rate of GST.

RPIY excludes mortgage interest payments and the effect of indirect taxes including GST from the RPI. RPIY increased by 3 percent over the twelve months to June 2011, an annual rate of increase 0.1 percentage points lower than in the previous quarter. RPIY is expected to remain around 3 percent for the foreseeable future.

The Economic Adviser's June 2011 report on the economic outlook warns, "*It is important that higher inflation is not factored into wage and price decisions, or else these temporary price increases could become permanent, which would damage the Islands competitiveness and the local economy. RPIY inflation is a more accurate measure of underlying inflation and is expected to remain around 3.0% for the foreseeable future, although it may rise slightly higher initially due to higher commodity prices and other input costs.*"

The overall increase of the RPI over the period from June 2005 to June 2011 has been similar in Jersey (21 percent), Guernsey (19 percent) and the UK (22 percent).

³ RPIX: the RPI excluding mortgage interest payments.

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During the 12 months to June 2011, the RPI increased by 4.5 percent in Jersey, by 3 percent in Guernsey and by 5 percent in the UK. Due to the changes in both the rate of GST in Jersey and of VAT in the UK during the twelve month period to June 2011, the important comparative measure of underlying inflation is provided by RPIY which in June 2011 was 3 percent in Jersey, 2.4 percent in Guernsey and 3.7 percent in the UK

Earnings

The 2011 Index of Average Earnings measures changes in average earnings between the last weeks of June 2010 and June 2011.

In June 2011, the average weekly earnings of workers in Jersey was 2.5 percent higher than in June 2010, compared to a 2.1 percent increase in the UK over the same period. Average earnings in Jersey's private sector overall increased by 2.2 percent over the year to June 2011; there was an increase of 2 to 3 percent in the majority of sectors. Average earnings in the public sector increased by 3.9 percent in the year to June 2011⁴.

Agriculture recorded a fall of 10 percent in average earnings, despite many workers receiving the increase in the minimum wage from 1 April 2011. This fall in average earnings was driven by fewer hours being worked in June 2011 compared with the previous June. The Forum understands that this change in hours was driven primarily by weather conditions. Average earnings in hotels, restaurants and bars rose by 1.5 percent. In this sector, pay rises implemented over the year were offset by fewer hours worked compared with the previous June.

Average earnings data also provides information on the level of earnings: the mean average weekly earnings per full-time equivalent employee in June 2011 was £650 per week. Average earnings by sector ranged from £360 per week in agriculture, £370 per week in hotels, restaurants and bars, £460 per week in wholesale and retail, to £850 per week in the public sector and £880 per week in financial services⁵.

Because the earnings distribution is skewed towards higher values, the mean statistic provides a numerically greater measure of "average" earnings than the median. The **median** average weekly earnings of full-time equivalent employees in Jersey in June 2011 was £520 per week.⁶

⁴ This was due to both a scheduled 2 percent pay award for the majority of employees and a retrospective 2 percent pay award for some pay groups.

⁵ These figures must be considered as estimates with an uncertainty of approximately £20.

⁶ The Jersey Income Distribution Survey (IDS) collected the necessary household and individual income information required to determine median income.

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Given that average earnings increased by 2.5 percent during the last twelve months, this implies that prices increased by 2 percent more than earnings over the period. Historically, the long-term growth of earnings in Jersey has been greater than that of prices, however prices have increased in Jersey at a faster rate than earnings in six out of the last twenty years, since 1991. If earnings growth had outstripped inflation, employment might have fallen more than it has.

The March 2011 Business Tendency Survey showed that 58 percent of respondents reported that they anticipated "no change" in the basic earnings of employees in 2011 compared to 51 percent in March 2010. Across all respondents from all sectors, the mean anticipated change in employees' earnings for 2011 was a 0.2 percent increase, compared to a mean anticipated change of 1 percent for 2010.

Employment

According to the Economic Adviser's June 2011 report on the economic outlook, unemployment in Jersey remains high relative to past levels, but remains low relative to other economies such as the UK.

Employment has also remained close to the highest level for at least 15 years, despite the significant global recession. Employment only fell by 110 between December 2009 and 2010. Stability in headline unemployment hides a shift from full-time to part-time work, and a shift from employment in the finance sector to employment in other sectors.

The December 2010 report on the labour market showed that employment in Jersey's banks was at its lowest level for almost five years. December 2010 recorded the highest level of locally qualified employees for at least nine years, whilst the number of non-locally qualified employees was at its lowest level for the same period. The total number of vacancies (full- and part-time) in the private sector in December 2010 was 2,020, a similar level to that seen in December 2009.

The Business Tendency Survey suggests that firms continue to see lower employment, quarter-on-quarter, particularly non-financial firms.

On 31 July 2011, the total number of people registered as unemployed and actively seeking work (ASW) in Jersey, on a seasonally adjusted basis, was 20 higher than a month earlier and 30 lower than the average for the previous 3 months.

Long-term unemployment, where a person is registered as unemployed for more than 52 weeks, has doubled during the last 12 months and now accounts for almost 1 in 5 (260 individuals) of those ASW. People aged 40 or above accounted for about half of that total. Further information about youth unemployment is included in the 'Youth Rate' section on page 29.

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Of those the people who registered as ASW in July 2011, almost nine out of ten recorded the industry that they had worked in immediately prior to becoming unemployed. The greatest numbers had previously been employed in 'Retail and Wholesale, Motor repairs and sales' (17 percent) and 'Miscellaneous professional and domestic services' (20 percent).

Economic outlook

As of June 2011, the States Economic Adviser summarised the economic outlook as follows; *"Globally the major economies appear to be beginning to recover from the great recession. However they are yet to see strong growth, so in many countries levels of output and employment are set to remain below pre-crisis trends for some time to come... Locally there are some positive signs but the picture remains mixed. The finance industry has seen further increases in activity, and is optimistic about the future. In contrast, the non-finance sector still appears to be struggling, and it may be longer before profitability and employment in these sectors begin to recover."*

The States Economic Adviser's report notes that the local economy continues to show resilience in the face of global economic difficulties, and is showing some signs of improvement, particularly in the finance sector. In March 2011, for example, eight of the ten indicators in the Business Tendency Survey were more positive or less negative in the latest round of the survey compared to the previous round, and the New Business indicator was at its most positive level seen in the seven rounds of the survey. However, the non-finance sector is yet to see expectations and optimism pick up to such an extent, and indicators suggest business activity levels are still falling.

Jersey's Fiscal Policy Panel noted some key points on the economic outlook internationally and for Jersey in its Annual Report of July 2011, which included the following:

- A 'double dip' recession remains a relatively unlikely scenario, but risks remain on the downside, and have, if anything, increased. It would be prudent for Jersey to plan on the basis of a fragile and drawn-out global recovery.
- Measured Gross Value Added (GVA) for the Jersey economy is likely to have fallen more sharply than previously anticipated in 2010, but indicators for the finance sector suggest that the outlook for 2011 has improved slightly since the last annual report in November 2010. There are some signs of improvement in the non-finance sector, but the outlook remains subdued.
- Household finances will be squeezed in the short-term by a combination of the increase in Goods and Services Tax (GST) and increases in food and oil prices. In time, higher interest rates will be a factor too.

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- The Panel judges that measured GVA fell by a further 6-8% in 2010, and forecasts growth of 0-3% in 2011 and 0-4% in 2012. Risks remain to the downside and to a greater extent than in November.
- Given the current local and global economic environment, it is likely that spare capacity remains in the Jersey economy, not least because the labour market remains weak and unemployment has not fallen.

In contrast to the finance industry, non-finance businesses report that business activity, new business and profitability have continued to fall this year. In the June 2011 Business Tendency Survey, a net balance of 22 percent of businesses reported a decrease in optimism about the overall business situation. The report states that *“Smaller firms (those with fewer than 50 full time equivalents) were significantly more negative than the larger firms for Profitability, Business Optimism and the two forward looking indicators, Future Business Activity and Future Employment.”* Non-finance firms expect further reductions in employment in 2011.

The Fiscal Policy Panel met representatives of the tourism industry and heard that while optimism was returning to the sector, yields were still under pressure and overcapacity remained in certain segments of the market.

The economic situation has not improved since last year when the Forum recommended a 2 percent increase to the minimum wage; in fact the situation appears to have worsened during this summer. Earlier this year, three of the nine members of the Bank of England's Monetary Policy Committee were voting to increase interest rates in order to combat rising prices. However, weaker economic growth in the UK and concerns about the strength of the global economic recovery meant that all nine members voted for rates to stay at a record low of 0.5 percent last month. Any increase in rates is seen by many as too risky given the fragile state of the economy.

Taking the economic advice into account in determining by what method the minimum wage should be adjusted, the main messages for the Forum are;

- Although the labour market in Jersey has been resilient compared to other jurisdictions, weak growth should be factored into all decisions;
- RPIY is a better guide to inflation at this time than RPIX
- Jersey's recovery is dependent on the global economy and policy should not be made on the basis that a robust global recovery is likely.

Impact on business

Employers who responded to the Forum's general survey were asked if, in the past year, they have made certain changes in their business:

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- Six of 13 employers had reduced the basic working hours of employees. Of the 14 employers who responded to the 2010 minimum wage review, 4 had reduced basic working hours.
- Six of 14 employers had reduced overtime hours, or overtime rates of pay compared to 5 of 14 employers in 2010.
- Four of 13 employers had reduced overall staffing levels compared to 7 of 14 employers in 2010.
- Nine of the 14 employers had increased prices or tariffs. Only 3 had done so in 2010.

Although only small numbers of employers are represented, the responses would suggest that employers may have been passing any additional costs and effects of the economic downturn on to customers this year, rather than by making redundancies.

The Jersey Farmers' Union (JFU) stated that, unlike other minimum wage paying industries, the agriculture/horticulture industry is unable to pass costs on to third parties and is reliant on the market price for the product, in competition with other jurisdictions with lower minimum wages. *"In order to remain a profitable Industry it is obviously of vital importance to keep the production cost-base as economical as possible... any significant increase will make our agricultural exports more expensive and therefore less competitive."*

Concerns within the Jersey Hospitality Association (JHA) were similar to 2009 and 2010; *"The downturn in the economy has led to changes in overall staffing levels with the decrease being sufficient to cause us concern...During a period of continuing changes in global economies, the tourism industry in Jersey has inevitably seen the impact and reality, the change has been hard; businesses have struggled, and so have the people they affect. The past three years have been tough for the hospitality sector and there is no doubt that 2011 and 2012 will bring further economic challenges. Global competition for demand and resources represents a real threat to Jersey's hospitality and tourism industry and these threats grow in intensity and become stronger every year...With this fragile economic backdrop prevailing together with increasing unemployment and a generally weak labour market there is a low expectation of wage increases or job creation in our sector of the economy."*

The JHA noted tourism statistics; *"On-island visitor expenditure reduced by £4 million in 2010, staying leisure visitor volumes decreased by 1% with 3,350 less visitors and staying leisure visitor average stay reduced from 4.4 nights to 4.3 nights. 2010 was thus an extremely difficult trading year for all hospitality related businesses. As a result of the economic and visitor downturn, yield, room rate and revpar (revenue per available room) across the accommodation sector has decreased."*

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Employers across different industries who attended the public meeting generally agreed that the economic situation is worse for employers and for employees this year than it was last year, citing increasing costs and the 2 percent rise in Goods and Services Tax (GST), as well as concerns about future costs including forthcoming rises in Social Security Contributions.

Responses - Increasing the minimum wage

Respondents were asked if there is any information or issues that they would ask the Forum to take into account; particularly in regard to whether (and by what method) the minimum wage should be adjusted.

As well as the difficult economic climate, specific issues that the Forum was asked to take into account in its review include the cost of living in Jersey, the buoyancy of the industries most affected by the minimum wage, the potential effect of raising the minimum wage substantially, minimum wage as an inflationary driver, and other wage increases across employment.

As in the 2009 and 2010 minimum wage reviews, concerns were expressed about increases in minimum wage making businesses unsustainable and leading to redundancies.

The JFU stated that "Most of our unskilled labour are seasonal workers from various parts of Europe. They choose to come and work in Jersey as the wages and conditions of employment are acceptable to them and in most cases, preferable to what they could earn at home. This is beneficial to them, to our Industry and to the Island and if the minimum wage is based too high this will jeopardise our mutually beneficial arrangement...A significant increase in the minimum wage will have an inflationary and spiralling effect with semi-skilled and skilled employees also demanding similar increases resulting in the Industry and the Island becoming uncompetitive. If prices continue to remain unchecked businesses will become unviable and cease trading adding to the level of unemployment in the Island and the consequent increased demand for income support."

The JHA commented that, "As a result of the current economic conditions, we have received a number of views that it would be both prudent and timely not to raise the minimum wage at all in 2012...we would ask that the Employment Forum practices extreme caution."

An employer commented, "It would be irresponsible and self defeating to set it at a higher level that these industries can afford."

A prospective employer commented that "the issue of the minimum wage being used (as in the UK) as a "bludgeon" to enforce fair treatment by employers - and the impact which increasing it has on inflation. There is an argument to be heard that by repeatedly (and rapidly) raising the minimum wage, companies are directly

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encouraged to raise prices - increasing consumer prices and thus making the newly raised wage seem equal or smaller in comparison (inflationary driver)."

An employer commented that; *"The employers of Jersey are not a resource that you can use to re engineer social inequities. In this current climate be very careful of adjusting the minimum wage. This can have a dramatic affect on the larger employers ie farmers and hospitality. As a government you need to support business or else provide work."*

JACS recommended that the minimum wage, trainee rate and offsets should be increased by a percentage equal to RPIX.

Unite asked the Forum to be bolder in its recommendations, noting that *"Half median earnings is a figure that has been commonly used for years to calculate low pay thresholds, this is also Unites policy for the minimum wage. Currently the median income for households in Jersey after housing costs was £522 per week divided by 36.9, which is the average hours worked per person in Jersey, equals an hourly rate of £14.14. Therefore Unite recommends the Jersey minimum wage rate should be £7.07p per hour in 2011."*

An employer and 2 'other' respondents said that the minimum wage is not high enough and is not enough to live on.

An 'interested party' commented that *"As far as possible the minimum wage should allow a person to be able to provide for a reasonable standard of living as broadly enjoyed by most members of Society."*

An employer said that *"£10 should be the absolute minimum wage."*

Daniel Wimberley commented that *"It is especially important for a small place like Jersey... to have very efficient use of labour, both to maximise returns from labour employed, and to limit net inward migration. The argument runs - if "cheap labour" was more expensive then employers would be more careful to use it effectively, train people to be as skilled as possible, streamline their working practises, make their businesses more labour-efficient."*

More than 80 percent of ATW respondents said that they would accept a job earning the minimum wage. Only 7 said that they would not, four of whom were over age 20. Comments included:

"I do not believe the minimum wage is comparative with the cost of living in Jersey, this amount could barely cover the rent even in States housing and makes it impossible for anyone to improve their situation."

"The minimum wage in Jersey should be at least £8.00 per hour to be able to afford to live in this very expensive Island."

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"I think that they are a little low for the current economy as you can't really get a lot for 6.32 let alone 4.74."

Other comments from two non-minimum wage earning employees included;

"At present we have a State employees wage freeze and all other workers should consider carefully whether they should be making unfair demands."

"No one elses wages are increasing at all so why should minimum wage increase?"

One agricultural employer who attended the public meeting noted that the minimum wage rate is competitive with other jurisdictions in attracting staff to Jersey and the employer easily recruits new staff at that rate.

The general impression from the public meeting was that last year's proposed increase of 2 percent was fair and there was a general assumption that a slight increase from April 2012 is inevitable. An increase of between 2 and 3 percent was discussed as acceptable by many and it was noted that an increase as high as RPI was unlikely to be acceptable. It was noted that a 'fair' increase from an employee's perspective is unlikely to be possible given the economic climate.

Data on minimum wage earners

A participant in the public meeting suggested that the purpose and method of calculating the minimum wage should be reviewed, particularly given the lack of data about how many people earn the minimum wage in the Jersey. Whilst some felt that this is the wrong time to re-engineer the minimum wage system, there was a strong reaction from many participants that in order to make appropriate decisions, data must be provided on minimum wage employees.

The Forum has been concerned for a number of years that this data is not available from current statistics and surveys. Discussions with the Statistics Unit indicate that it would not be possible to adapt an existing survey, or to initiate a new survey specifically for this purpose. One difficulty is that the equivalent surveys used to collect this information in the UK and Isle of Man are required to be completed by law, whereas there is no such requirement in Jersey. Returns are provided on a voluntary basis, which can become a burden for employers.

Another factor is the small numbers of employees involved; questions relating to the minimum wage were included in a Jersey Annual Social Survey (JASS). However, data representative of minimum wage earners was not available because the resulting sample of individuals earning the minimum wage was so small.

Data from the latest Income Distribution Survey (IDS) allows the number of minimum wage earners to be estimated at 400 +/- 200. However, there are limitations as the survey was not created for this purpose; there is unlikely to have been a representative sample of employees in the hospitality and agriculture

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industries, particularly seasonal workers. The Forum considers that perhaps this figure may be considered as representing the resident population of minimum wage earners, but is not confident in relying on this as a meaningful representation of the situation.

Those attending the public meeting expressed surprise at this low estimate of minimum wage earners. However, the minimum wage appears to be mainly paid in the agriculture and hospitality industries with a combined total of only 12 percent of the labour market - around 6,000 people - employed in those sectors in December 2010. Generally wages are banded and only a proportion of employees in a business will earn the minimum wage whilst other more experienced employees receive higher rates of pay.

In order to contemplate a higher minimum wage, or any other major changes to the system and method of calculation, the Forum must have data to fully consider the impact. The Forum particularly wants to receive information indicating the number of minimum wage employees in Jersey, the industries they work in, and the type of contracts, e.g. seasonal or permanent, part time or full time. The Forum expects that expert independent research would have to be commissioned to achieve this aim.

Political objectives

The States approved a Proposition⁷ in 2010 committing the Forum to having regard to the States objective that the minimum wage should be set at 45 percent of average earnings within a period of 5 to 15 years.

As in 2010, the Forum is concerned that if the States considers that the Forum has not taken sufficient account of this objective, there is a risk that States Members may seek to increase the rate shortly prior to implementation, bringing uncertainty for employers. However the Forum also has a statutory duty to consider the impact of the minimum wage on the economy and competitiveness, and these are given equal weight in the Forum's deliberations.

Last year's minimum wage rate represented 40.15 percent of mean weekly earnings. There was a general view amongst those who attended the public meeting and arising from written responses that a move towards a minimum wage representing 45 percent of average weekly earnings cannot be considered at this time.

An employer stated that *"the long term aim of 45% of average earnings may be too high, given the artificially high levels of finance salaries in the Island... If a more realistic target were set it may be easier to come up with an agreed mechanism to get there in sensible and palatable annual stages."*

⁷ P.26/2010, as amended

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The JHA commented that *“the aspiration of a nil increase could be seen as impractical given political pressure for a percentage increase equal to 45% of the average wage over a given period of time.”*

In previous years, the Forum and the Social Security Minister have expressed an intention to increase the minimum wage. In the 2010, the Social Security Minister’s stated his position; *“I have made it clear to the Employment Forum that when we are out of recession, they should have the courage to come forward with increases because it is only right and proper that they do so.”*

The Forum aspired to increases comparable to a greater percentage of average earnings in 2008 when there had been continued growth in the economy. Despite resilience in the labour market, given the economic advice that it is prudent to plan on the basis of a fragile and drawn out global recovery, any shift towards a disproportionate increase in the minimum wage would be inconsistent with advice from the States Economic Adviser.

The Organisation for Economic Co-operation and Development (OECD) advises that, *“Median rather than mean earnings provide a better basis for international comparisons as it accounts for differences in earnings dispersion across countries. However, while median of basic earnings of full-time workers - i.e. excluding overtime and bonus payments - are, ideally, the preferred measure of average wages for international comparisons of minimum-to-median earnings, they are not available for a large number of countries.”*

The Forum is therefore pleased that a median earnings figure is now available for Jersey to provide a more meaningful comparison. According to this more appropriate measure of average earnings, Jersey’s current minimum wage of £6.32 represents 48.6 percent of the median average weekly earnings.

SECTION 4 – RECOMMENDATIONS

Minimum Wage

The current minimum wage is £6.32 per hour. The Forum has considered the minimum wage rates that would result if certain percentage increases were applied based upon the following indices and comparators that are available:

	Minimum wage
Average Earnings Index 2.5%	£6.48
Retail Price Index 4.5%	£6.60
Retail Price Index (X) 4.4%	£6.60
Retail Price Index (Y) 3%	£6.51
Mid point between RPI & AEI 3.5%	£6.54

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40% of mean average weekly earnings (£650) 2.8%	£6.50
40.5% of mean average weekly earnings 4.1%	£6.58
45% of mean average weekly earnings 15.7%	£7.31
40% of median average weekly earnings (£520)	£5.20
45% of median average weekly earnings	£5.85
UK 2.5% increase (to £6.08 from 1 Oct 2011)	£6.48
Isle of Man 1.6% increase (to £6.20 from 1 Nov 2011)	£6.42
Guernsey 2.5% increase (to £6.15 from 1 Oct 2011)	£6.48

For the majority of public sector employees, earnings have increased by 2 percent (and 3.9 percent in some cases), whilst across the private sector there has been a 2 to 3 percent increase in earnings. However there is still evidence of pay freezing and expectations of low pay rises.

The Forum notes that, as in the previous two minimum wage reviews, respondents generally did not oppose a realistic or minimal increase in the minimum wage, but did oppose a significant increase in the minimum wage on the basis that it would jeopardise businesses and jobs.

Taking into account the evidence available to the Forum;

- an expectation of lower wage increases in 2011 than in 2010 across all sectors;
- indicators suggesting that the non-finance sector is still struggling, with business activity levels still falling;
- economic advice that high RPI inflation should not be factored into wage decisions;
- the stable but still weak labour market;
- increasing levels of long-term unemployment;
- average earnings growth of 2.5 percent overall and 2.2 percent in the private sector in the year to June 2011, and
- minimum wage increases of 2.5 percent in the UK and Guernsey,

the Forum unanimously recommends that the minimum wage should increase by 2.5 percent to £6.48 per hour. This represents 49.85 percent of median average weekly earnings and 39.9 percent of mean average weekly earnings.

This decision resulted from significant debate amongst the Forum members. It is acknowledged that this is 0.1 percent lower than 40 percent of the mean average weekly earnings. To recommend a minimum wage representing 40 percent of mean average weekly earnings would require a 2.8 percent increase to £6.50 per hour.

The Forum considered whether a 2.8 percent increase should be recommended. However, it was wary of proposing a politically driven increase as the Forum must also consider competitiveness, the economy and jobs.

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The Forum believes that there is a risk that if the rate is perceived to be too low by States Members, it may be subject to political will (particularly with elections imminent), bringing unwelcome uncertainty for employers in the rate that is announced. However, this risk is outweighed by the potential impact of an excessive increase. The Forum recognises that greater increases would be required in future to meet the States' intentions.

The minimum wage has increased by 22.3 percent since it came into force, compared to a total increase of 21.7 percent in average earnings over the same period. The recommended increase to £6.48 gives a total 24.3 percent increase in the minimum wage compared to a total 24.2 percent increase in average earnings, demonstrating that the level of minimum wage is keeping track with earnings increases across the Island.

The recommended increase is lower than the increase in RPIX (4.5 percent). However, the Forum accepts economic advice that RPIY is the more appropriate figure to reflect commercial realities at this time given the impact of the GST increase on RPI and RPIX.

The Forum continues to believe that caution is essential to protect jobs. In its 2009 and 2010 reviews, the Forum's main concern was to avoid triggering redundancies. Although the labour market in Jersey remains weak, policy decisions including caution in minimum wage increases have contributed to protecting jobs, resulting in only a small fall in employment overall.

The Forum recommends a minimum wage of £6.48 per hour to apply from 1 April 2012.

Given the lack of data about minimum wage employees in Jersey, the Forum recommends that resources be made available in 2012 to enable the Forum to commission appropriate research.

TRAINEE RATE

The 2010 minimum wage review revealed that some employers were unclear on the criteria that must be met to allow the trainee rate to be paid and a perception that the code of practice⁸ is not sufficiently flexible. The Forum wanted to find out whether the code is workable and to hear about people's experiences with the code of practice and the criteria surrounding the trainee rate.

Employers were asked if they had employed trainees on the lower rate of £4.74 per hour. Only 2 of 14 employers who responded said that they had, both of whom said that they had not experienced any difficulties in applying or understanding the code.

⁸ The Code of Practice is on the website www.jacs.org.je/content/38/index.html

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The Forum had hoped for some responses that would indicate how the code of practice or the criteria could be improved or simplified.

There was an indication at the public meeting that people find the rules confusing or unclear. Although there is a perception that the trainee rate is little used, in JACS experience, almost all apprentices in the first year of their training are receiving the trainee rate, across all trades, and most trainees are aged 16-18.

Some general written comments on the trainee rate were received including from the JFU and JHA. Employers in these industries rarely, if ever, use the trainee rate.

The JHA consulted its members and concluded that *"it is evident that trainee rates are not widely used so we cannot comment conclusively on the criteria being used to allow a trainee rate to be paid or that the code of practice is not sufficiently flexible. Individuals have confirmed their support for the £4.74 rate being applied in return for the investment they make towards the training and development of a trainee."*

The JFU feels that *"a trainee rate offered to an employee of any age of up to one year where certain conditions are met and accredited training is being provided has merit although this is not really relevant to our Industry. However, it is important that any trainee rate is not open to abuse by disreputable employers."*

Unite does not support a trainee rate in principle, commenting that, although an employee who is training may be paid less than the full rate for a particular job, *"there is no justification for this to be at a lower rate than the wage open to unskilled workers not seeking training."*

A Skills Board Member commented that *"if the States of Jersey decide to stop 16-18 year olds on the ATW scheme from collecting Income Support, they should be entitled to a trainee salary by their employer (possibly subsidised by the States)."*

Trainee rate period

The Minimum Wage Regulations provide that the trainee rate may be paid for up to one year in the first year of employment by an employer, in the particular job for which the employee is being trained. After one year on the trainee rate, with the same employer, employees will become entitled to the full minimum wage.

Respondents were asked if the trainee rate should be payable for maximum of 6 months, 1 year or another period. Responses to the general survey were as follows:

- Three respondents supported a 6 month maximum trainee rate period (3 employers).

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- Ten respondents supported a 1 year maximum trainee rate period (3 employers, 3 employees, 3 'others', 1 union).
- Twelve respondents gave other responses; one employer suggested a 2 year period and others suggested that there should be some flexibility in the period depending on the training necessary for the course, job or qualification, and 3 respondents suggested that the duration should depend upon the particular trainee.

An employer suggested that the trainee rate should be available on a sliding scale over the length of the training period. A second employer also supported a graduated trainee rate period, potentially starting from £3 in year 1 and moving to £6 in year 3. This employer noted that there is a considerable financial commitment in providing training to an employee and that employees are unproductive until they are qualified.

The public meeting also revealed that the jump from trainee rate to minimum wage is too much for some businesses to cope with and a graduated rate was considered appropriate where a training course is longer than 1 year. There was a suggestion that the Forum should consider the periods and rates that apply in respect of apprenticeships.

A hospitality employer commented that the trainee rate may fail to attract staff and is a disincentive to engaging in work if the rate is discounted for too long.

Paul Le Claire said that "*Trainee rates should cease when a set level or standard of basic training is completed...if we set a trainee rate it must be factored into the job and not just a set period for all.*" The Forum notes that the code of practice currently provides that the trainee rate is payable only while training is ongoing; the maximum duration that the trainee rate may be paid is either the time taken to successfully complete the training, or one year, whichever is shorter.

JACS commented that the "*Trainee rate should be payable for the first year of training, irrespective of whether or not the trainee joins a different employer during that year. At present, if circumstances require that a Trainee (who may have been paid the Trainee Rate for, say, 9 months) moves to a different employer then that Trainee is likely to paid the Trainee Rate for a further 12 months.*"

There is a perceived unfairness created by the rule that the trainee rate may be paid in the first year of a **new job with a new employer**. After one year of training and receiving the trainee rate in a job, if the employee moves to a new job but continues the training course, the new employer may pay the trainee rate for up to one year while that training continues. If the employee had remained in their previous employment, the full minimum wage would have been due after one year.

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JACS consider this to be unfair because the employer benefits from the training that the employee has already undertaken, whilst being permitted to pay the lower rate for up to one year. Some of those present at the public meeting agreed that after one year of training, the employee should be paid the minimum wage, irrespective of whether they move to a new employer. It was however noted that the new employer, whilst paying the lower trainee rate, must also invest in the employee by paying for the continuing training course and paying the employee the trainee rate for hours spent training.

Trainee rate conditions

Employers were asked if they would employ more trainees if there were different or more flexible rules for payment of the trainee rate. Five employers said that they would employ more trainees and 7 employers said that they would not. One employer commented that it might encourage the employment of trainees, as recruitment to some technical areas is difficult.

Comments explaining what had deterred employers from employing more trainees included consideration of the cost of employing a trainee whilst they are not generating income for the business, difficulties in supervising trainees in small businesses and the detrimental impact on service.

The code of practice sets out the further requirements that must be met to permit payment of the trainee rate. Respondents were asked to indicate if they agreed that the trainee rate should only be payable where the training being provided is:

- relevant to the job
- undertaken mainly during paid working hours
- supervised
- provided at no cost to the employee, and
- leading to a formal or accredited qualification

Almost all (with the exception of one or two) respondents agreed that training must be relevant to the job, undertaken mainly during paid working hours, and supervised. The public meeting revealed general agreement with the criteria that permit payment of the trainee rate.

JACS noted that, although the code currently requires training to be undertaken mainly during working hours, an employee should still be eligible for the trainee rate if training is only available (or is mainly available) during the employee's non-working hours.

Eight respondents (4 employers and 4 'others') did not agree that the employer should bear the cost of the training. Eight respondents (6 employers and 2 'others', including a Skills Board member) did not agree that training should have to lead to a formal or accredited qualification.

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Respondents were asked to describe any **other** conditions that should be met to permit an employer to pay the trainee rate.

The JHA suggested that an independent assessment could be made of training to validate the trainee rate, e.g. by Highlands College.

An employer suggested that the age and experience of the employee might be a factor.

A hospitality industry employer commented that there should be some proof that training is being undertaken.

A member of the Skills Board commented that *"the employer should commit to providing additional training support - i.e. time off work to take exams, obligatory training sessions, study leave."*

Some commitment of continued employment from both parties and/or protection against dismissal was suggested by some respondents. An 'other' respondent suggested that a trainee should be obliged to repay the employer's training investment by committing to work for the employer for a fixed period of time after completion of training. An employer commented that, *"a guarantee of a job at the minimum wage or above should be included so that employers cannot just employ "trainees" to take advantage of the reduced rate."* An employee similarly suggested that *"There should not be the ability to get rid of the trainee at the end of the training in order to hire another trainee at a cheaper cost to the business."*

An 'other' respondent commented that *"although it is a good idea and a way for (relatively) unskilled workers to move into an industry, it should not be open to misinterpretation as an easy way to get cheap labour for a period of time."*

Two respondents said that an agreement between the parties must be in place. One respondent suggested that a model agreement document could be provided. The Forum notes that the code of practice already requires a formal training agreement in writing, to be kept by the employer for three years. JACS provide a template for trainee terms of employment.

Accredited training

The Minimum Wage Regulations also require that a trainee is undergoing an 'accredited course of training' that is approved by the Social Security Minister. Any training course that meets the requirements of a code of practice is deemed to have met the approval of the Minister.

'Accredited training' includes courses or training that are recognised and accredited by a national or international exam board, including City and Guilds, a National Vocational Qualification or General National Vocational Qualification (GNVQ), a

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GCSE or A level; an "access" course for entry to higher education; or a course designed to assist persons whose first language is not English.

As well as academic and vocational courses, the code was intended to be sufficiently flexible to include new training schemes by including for example, any course that is included in the Economic Development 'Skills Strategy for Jersey', courses for literacy, maths, or independent living for people with learning difficulties, in-house company training and any other course that meets a certain standard and formal tests of validity.

Where training does not appear to meet the requirements of the code, a written request may be submitted to the Minister to approve the training as 'accredited'. This might include 'in-house' training for trades where formal training is not available locally, in which case Jersey Enterprise can assist the employer in keeping adequate records via a log book process to demonstrate that the training and its outcomes meet the criteria.

Respondents were asked if certain types of training should permit an employer to pay the trainee rate. A list was provided of the course types, providers and qualifications that are currently set out in the code of practice that count as accredited training (subject to the other criteria being met).

Most respondents agreed that training might include; Nationally and internationally recognised qualifications e.g. City and Guilds; courses leading to NVQ, GNVQ, or equivalent; courses leading to GCSE or A level; "Access" courses for entry to higher education; in-house company training that meets a specified standard; and any course in the Economic Development Minister's 'Skills Strategy for Jersey'.

Around half of respondents agreed that "basic literacy/maths courses for people with learning difficulties preparing them for entry to other courses" should be included.

Only a third of respondents agreed that English courses for people whose first language is not English should be included. Two comments from 'other' respondents in relation to this were; "*The principle should be to prepare a person for the vocation however skills such as language should be self motivated surely!*", and "*There should be a stipulation that the employee should have a fair knowledge of the language pertinent to the country of employment before he/her should be allowed to work in that country it should not be down to the employer to give that training.*"

Unite responded that none of the list of training options should permit payment of the trainee rate; "*as a trade union we do not want to be seen to be endorsing the further extension or training options that could be cherry picked by rogue employers to deliberately pay under the NMW whilst at the same time not providing genuine training opportunities for workers.*"

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Respondents were asked if any other types of training or courses should permit payment of the trainee rate. Comments included;

An employee said; *"What ever courses are allowed, it should be specifically stated in the employers handbook exactly what courses are required for employees to be on trainee rates and to specifically exclude paying trainee rates if a new employee already has the required certificates. That is, trainee rates should not be a probationary rate..."*

An employer commented; *"I don't think this is the correct approach. Its not really about the type of course or training given it should be about what that training will lead to in terms of full employment."*

A Skills Board Member said, *"checks need to be made to ensure that employees are genuinely trainees and studying a qualification / course which is valid. Employers need to be checked that they are actively supporting the trainee in their studies and are not using the individual purely as a source of cheap and alternative labour."*

An employer commented that formal or accredited qualifications are not available (or are not available in Jersey) for some roles and that training could instead be linked to achieving objectives. A prospective employer commented similarly; *"could it be possible for a company to have their in-house programme certified by ED or another department if there are no existing qualifications or standards that are appropriate?"* The Forum notes that this is provided currently via the Jersey Enterprise training log process.

Trainee hourly rate

ATW scheme respondents were asked if they would accept a job as a trainee earning £4.74 per hour if the employer was paying for the training course, and giving paid time off during working hours to undertake the training, for 6 months, 1 year, or not at all.

- More than one third said that they would accept the trainee rate for 6 months;
- More than one third said that they would accept the trainee rate for one year;
- Less than one third said that they **would not** work as a trainee for £4.74 per hour (11 respondents; 7 of whom were aged 16-19).

Three respondents commented that they would work as a trainee for 2-3 months, and one said that she would work for the trainee rate as long as income support continued to be paid. One respondent said that he would work for the trainee rate for as long as it takes to earn a pay rise because training costs a lot of money.

Comments from ATW respondents aged 16-19 included;

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"Better than what i get now, which is nothing."

"Training is a valuable thing in todays competitive market."

"I would accept a 1 year course at this wage as it would benefit me in the future"

"The trainee rate is fair as it would help both employer and employee"

"Although being paid to go on a training course linked to the work you are doing is good. It would be difficult to support myself for longer than 6 months on £4.74 per hour"

"I think that after a year they would have the training needed to be paid more witch is fare they've done the training they could get paid more."

"£4.74 is to low for a teenager to support theirselves on due to travel, they may have pay rent, nights out plus other"

3 months maximum – "I dont think I would need the extra training."

"£4.74 is as good as nothing, nobody can live off that wage. Time would be better spent looking for a more reasonable job offer."

Comments from ATW respondents aged 20 and older included;

"Would be a foot on the ladder towards a career"

2 months maximum - "Because the deadline of my university debts is closing in so I can't be a trainee for too long."

"I would find it impossible to pay my rent and various household bills and would have no money left for basic essentials!"

"This is a pitifully small amount of money. I would bet that paper boys/girls would earn more than this!"

"It would be impossible to have a sustainable quality of life on those earnings.As a school leaver with parental financial support I may consider it but would prefer a reasonable wage with a fixed contract after completion to remain with the firm for a specified time period in order for them to recoup their training outlay."

At the public meeting, there was a suggestion that older trainees who could bring life experience to the role should be paid a higher level of trainee rate.

On the basis of the range of responses received, it would be appropriate to increase the trainee rate to a rate that is equivalent to 75 percent of the minimum wage rate, as in previous years. However, the Forum wishes to give further consideration to

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the conditions, duration and types of training that permit payment of the trainee rate and considers that, in order to do so appropriately, a co-ordinated approach with the expertise of the Jersey Skills Board and Jersey Enterprise is essential. In particular, the Forum believes that graduated trainee rates available over a longer period should be considered.

The Forum recommends a trainee rate of £4.86 per hour.

The Forum recommends that direct consultation should be undertaken with the Jersey Skills Board and Jersey Enterprise in 2012.

YOUTH RATE

The Forum has consulted and made recommendations on the matter of a youth rate in previous minimum wage reviews. However, both a youth rate and a student rate have previously been rejected by the States.

The Forum has recently consulted on the matter of a youth rate; in both 2009 and 2010 reviews, the Forum found insufficient evidence to justify a recommendation for a youth rate. Although there was some support for a youth rate, in particular from employers, the JHA and JACS, there was no evidence that the minimum wage is a factor in youth unemployment, or that the availability of a lower rate would impact on employers' or young employees' behaviour sufficiently.

In previous reviews, employers have claimed to be discouraged from taking on younger employees for the same rate of pay as older employees as they often require greater levels of supervision due to their lack of 'work ethic' and experience in the work place, whilst young people have claimed to be unwilling to work for the minimum wage or the trainee rate. It was suggested at the public meeting that young people's attitudes to work might change in 2011-2012 due to changes to the income support allowance for young people aged under 19.

The Forum has been criticised for not asking questions about a youth rate in this latest review. Some of those who attended the public meeting said that, with a high proportion of young people unemployed, a youth rate would enable employers to consider employing more 16-18 year olds. However, other attendees were concerned about the potential impact on unemployment rates amongst older employees if young people become a source of cheap labour.

On 31 July 2011, almost two-fifths of all people registered as actively seeking work were under the age of 25. A fifth were aged 16-19 years. Of those 300 teenagers, 130 were on the Advance to Work scheme. Most age categories saw increased numbers of people registered as actively seeking work in July 2011 compared with the previous month, but the greatest increases were recorded for those aged 16-19 and 20-24 years, up by 30 and 20, respectively, in the latest month.

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People under 25 years of age accounted for about a third of the total number of long-term unemployed in both July 2010 and July 2011. The number had increased by 50 during the twelve months to July 2011.

JACS commented that, *“despite an apparent lack of support in previous years, JACS still maintains that a Youth Rate for those aged 16 or 17 who are not undertaking recognised training (that qualifies for the Trainee Rate) would encourage more employers to offer employment opportunities to young people as well as work experience to students. Our understanding is that Jersey’s youth unemployment is proportionately greater than that of similar island jurisdictions. For the sake of simplicity and fairness, we suggest that a Youth Rate be introduced at the same level as the Trainee Rate.”*

Comparing youth unemployment across jurisdictions; as of May 2011, 35 percent of the total unemployed and ‘actively seeking work’ in Jersey were aged 16-24. In the UK, 37 percent of the total unemployed (2,450,000) were aged 16-24 and in the Isle of Man 47 percent of the total (843) were aged 16-24. According to the Office for National Statistics, unemployment in the UK rose by 80,000 in the three months to July 2011, with 77,000 of the newly unemployed aged 18 to 24. The number of students fell by 46,000 in the same quarter.

The JHA *“believe that employers are generally discouraged from employing younger people, unless they have to, as a result of having to pay them the minimum wage or above. There are few jobs for them because they are simply over-priced when they first leave school and are in need of training and supervision... in other countries many young people are just provided with board and lodging when they are going through an “on the job” or “stage” short-term job experience process. We, therefore, cannot understand the reluctance is agreeing a “youth rate” in Jersey set for 16 and 17 year olds (up to the age of 18), to sustain both local employment prospects and the industry generally, with the standard minimum wage applying at 18 years and over, regardless of training status. Given the current statistics regarding unemployed young people, surely this is sufficient evidence to support such a rate being adopted by Jersey.”*

An employer said, *“We still believe that there should be a youth rate which is paid to under 18s. This should take the place of a trainee rate and all over 18s should be paid the minimum wage irrespective of any training they might be undergoing.”*

Employees in Jersey are entitled to the minimum wage from age 16 because the States rejected a youth rate when the minimum wage system was introduced in 2005. Whereas in other jurisdictions, the right to the full minimum wage rate has not been **removed** from employees aged 16-18 in order to introduce a youth rate. The Forum is mindful that to introduce a youth rate could reduce the income of young people who are currently entitled by law to the full minimum wage.

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The Forum appreciates that the current economic climate could justify the introduction of a youth rate, bringing opportunities for both employers and employees. However the government initiative to improve the employment prospects of young people appears to be proving successful. Since it began, the ATW scheme has secured paid employment for 214 trainees and a further 136 young people are currently registered.

The Forum considers that significant independent evidence indicating that a youth rate is likely to have a positive employment effect for young people, as well as an assessment of any potential impact on older workers, would be essential to demonstrate that a lower minimum wage rate is acceptable for young people and would have an impact on youth unemployment. The Forum is of the view that, without this evidence, it is highly unlikely that States Members would be in favour of a youth rate. The UK's Low Pay Commission regularly commissions expert reports and in 2011 commissioned research that focussed on youth employment.

The Forum recommends that a youth rate should not be introduced in 2012. The full minimum wage, or trainee rate, should continue to be payable to employees over compulsory school age.

The Forum recommends that resources be made available in 2012 to enable the Forum to commission research to explore youth employment and the potential impact of a youth rate on all employees, regardless of age.

OFFSETS

The minimum wage legislation provides that a charge for meals may not be deducted from minimum wage pay unless it is provided in addition to staff accommodation and employers may not deduct a proportionate amount of pay for meals where less than three meals per day are provided.

The Forum's 2009 minimum wage review revealed that some hospitality and agriculture employers supported a change to the offsets so that employers would have the option to deduct an amount for meals from the minimum wage where staff accommodation is not provided, and the option to deduct a charge for individual meals on the grounds that employers who do not provide three meals each day and/or accommodation are being disadvantaged.

The Forum had noted comments from respondents in previous reviews that meals provided to staff during shifts are generally regarded as an employment "perk", and that some hotel groups do not deduct for meals, despite providing this benefit. The provision of meals is seen as convenient for the employer because employees remain on site and do not have to take breaks to eat meals elsewhere. It had been suggested that a 'meals only' offset may be acceptable if the employee is permitted

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to opt in or out of taking meals however the Forum was concerned about the practical administration of such a scheme.

The Forum noted that responses to previous consultation have not been received directly from those involved with businesses that would be affected by such a changes, such as cafés, bars and restaurants. The JHA has responded to previous consultations as an industry representative; however the Forum wanted to receive evidence from those who would be directly affected by greater flexibility in the offset for meals and asked the JHA to assist the Forum by encouraging those involved in these businesses to respond directly to the consultation.

Meals without accommodation

Respondents were asked if employers should be permitted to deduct sums from minimum wage pay where meals are provided to an employee who does not live in staff accommodation. Nine said yes (6 employers, 1 employer association and 2 employees) and 17 said no (8 employers, 2 employees, 1 union and 6 'other' respondents).

The JHA strongly supports a 'food only' offset "as there is no reason in our view why a restaurateur who wants to apply this provision should not be compensated for the food provided, otherwise restaurants and pubs etc may stop providing this staff benefit. Our management committee includes a number of restaurateurs and pub operators who feel that a food only offset should apply in addition to the other offsets already in operation. During the next five years, food inflation is forecast to increase by an average of 8.5%, well above the 2% to 3% average of the past 10 years...The cost of providing meals for staff is now an even greater expense for those businesses that do not have the facility to provide accommodation as well...The view that providing meals during shifts is generally regarded by some as an "employment perk" because it supposedly keeps employees on site and they do not have to take breaks to eat meals elsewhere during the working day is not a correct assumption in our view."

One agriculture industry employer noted that his industry generally does not provide meals to employees.

There was also agreement amongst those who attended the public meeting that a charge for meals should only be deductible from the minimum wage where accommodation is also provided. It was noted at the meeting that a 'meals only' offset would effectively reduce current salary levels for some employees, however it is not known how many employers would offset a charge for meals against minimum wage, and in what industries, if it were permitted.

Other administration issues were raised during the public meeting, including; that break times would have to be agreed and allocated to allow staff to eat the meal, whereas current arrangements are likely to be more flexible. Also, where an

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employee is on holiday, there could be no deduction for meals as meals could not be provided to that employee. There was general agreement that if a 'meals only' offset is available, employees should be able to opt in or opt out.

"Unite does not believe that there should be an offset for food because workers are tied to the accommodation for the employers benefit and quite often have no available alternative for food due to their location of work. However Unite does not believe that employers should have the option to offset food where it is not providing accommodation either because two ways of doing things will just create greater confusion and room for rogue employers to exploit. Unites believes that there shouldn't be a food offset in any circumstance."

If a 'meals only' offset is to be considered, it will be necessary for the Forum to receive detailed evidence from stakeholders, as such changes would have a significant impact on the overall pay package. The Forum considers that data on minimum wage earners will assist in future reviews.

Individual meals

Respondents were asked if employers should be permitted to deduct sums from minimum wage pay where **individual** meals are provided to an employee, e.g. for one or two meals per day.

Fourteen respondents (7 employers, 2 employees, 1 union and 4 others) said that deductions for individual meals should not be permitted, 6 said that it should be permitted (1 employer association, 4 employers and 1 employee, and 4 'other' respondents (2 employers, 1 employee and 2 'others') said that this should only be permissible where accommodation is provided with the meals.

Views varied at the public meeting; some felt that single meals for staff who live-in should be deductible, whilst others felt that this would be too difficult to administer and unmanageable as the only fair way of providing this benefit in kind would be to allow employees to opt out of the individual meals.

Employers were also asked a number of questions about the offsets: Six employers said that they **do** provide meals to employees who **do not** live in staff accommodation. Of these, two said that, if permitted, they would offset against minimum wage pay a sum for individual meals provided to an employee.

Nine employers who responded to the general survey said that they do not provide meals to employees who live out. Of these, only 1 said that, if permitted, they would offset against minimum wage pay a sum for individual meals provided to an employee.

The JHA noted that 'meal credits' form part of the minimum wage system in the USA and suggest that the Forum considers a meal credit that is fair and reasonable

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and without any profit, for example a 22p deduction per hour based on a 5 hour shift.

The Forum notes that a meal credits system is potentially onerous for an employer. In the USA example, meals may only be credited towards the minimum wage where there is a voluntary written agreement between the employee and employer, it cannot be a mandatory condition of employment, the employee must be informed of, and accept, the amount of the deduction prior to accepting the meal in lieu of cash; employees must periodically be offered the opportunity to refuse meal credits, the cost must be reasonable, and the employer must maintain records to show the actual meals consumed, who ate the meals, and the actual cost of the meals to the employer.

If an 'individual meal' offset is to be considered, it will be necessary for the Forum to receive detailed evidence from stakeholders, as such changes would have a significant impact on the overall pay package. The Forum considers that data on minimum wage earners may assist in future reviews.

The Forum recommends no change to the current provisions; an employer should only be permitted to make a deduction from minimum wage pay where three meals per day are provided with staff accommodation.

Opting out of meals

Respondents were asked if employees should be permitted to 'opt out' of meals (whether 1, 2 or 3 meals per day) so that the employer does not make a deduction for those meals from minimum wage pay.

Twenty-one respondents said that employees should be permitted to opt out, including 1 union, 12 employers, 3 employees and 5 others. Four respondents, including 2 employers, said that employees should not be permitted to opt out.

Three respondents commented similarly on the "*Administrative costs to monitor who does and does not take meals.*" JACS considered that this would introduce unnecessary complexity for employers, but one hospitality employer felt that, although this may be difficult to manage, it is possible.

An employer commented that "*this provides a incentive for the hotel to provide a decent food.*"

Many respondents commented that employees must be able to make their own choice and may prefer to make their own food, noting for example that food might be unsuitable due to special dietary requirements. "*The meals provided by the employer may not be suitable...Employees should have the right to choose where they eat.*"

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Paul Le Claire said, *“Employers should be encouraged to offer food and accommodation but paid for by the employee and not deducted. Deducting means controlling people. Payment should be voluntary and on some days people will have a deduction but perhaps not eat the meal.”*

“Unite believes that workers should be able to ‘opt out’ if they wish. However Unite believe this is the wrong way to be dealing with excessive deductions by employers, which is really the problem in the first place. Unite believes that no employer should be allowed to deduct anything, which would stop rogue employers from being able to make any deductions. Then the argument will be that employers will charge for the food, well it is Unites believe that the employers who are already paying the lowest legally acceptable hourly pay in Jersey in industries where tied accommodation is common should be providing food for their workers irrespective of whether accommodation is provided or not.”

The Forum recommends that an ability to ‘opt out’ of meals should be considered only if the offsets are extended to permit a deduction from minimum wage pay for ‘meals only’ and/or individual meals.

Offset against trainee rate

The minimum wage legislation currently permits an employer to deduct the maximum sum for accommodation (with or without meals) against the trainee rate. The Forum is concerned that this is too low a wage to be subject to the full deduction in respect of benefits in kind.

Respondents were asked if employers should be permitted to deduct sums for accommodation (with or without food) where the trainee rate is paid, up to a maximum deduction of;

- 100 percent of the maximum deduction (the same as for minimum wage earners) – 2 employers agreed.
- 75 percent of the maximum deduction (the trainee rate is 75 percent of the minimum wage) – 8 respondents agreed (5 employers, 2 employees and 2 ‘others’).
- 50 percent of the maximum deduction – 6 respondents agreed (4 employers, 1 employee, 1 other).

One respondent suggested a 40 percent deduction. Unite said that there should be no deduction for benefits in kind from the minimum wage or the trainee rate. An ‘other’ respondent agreed that there should be no deduction for accommodation; *“The trainee rate is so low anyway it would be no incentive for persons to try employment.”*

Respondents who supported a 75 percent deduction included a hospitality industry employer who said, *“you pay them less as they are not as productive as “normal”*

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employees. they still take up accommodation and it would be unfair / discriminative towards other employees if they didn't pay their share for accommodation."

JACS felt that a 75 percent deduction was equitable; *"Without this, a Trainee provided with accommodation free of charge is likely to receive a higher disposable income than a trained colleague who is required to pay for accommodation."*

An employee commented, *"my understanding is that in general the current provisions work well; there should be similar provisions for trainees on a proportionate basis."*

The Forum expected that such a change would be unlikely to create concern amongst employers as the offsets are predominantly used by the Hospitality and Agriculture industries and that those industries rarely, if ever, pay the trainee rate.

The Forum recommends that an employer should be permitted to deduct a maximum of 75 percent of the maximum offsets against trainee rate pay, which gives a maximum accommodation offset of £53.21 per week and a maximum offset for meals and accommodation of £70.94 per week.

Increasing the offsets

The maximum amounts that may be offset against the minimum wage each week where employees are provided with meals and accommodation, or accommodation alone, have previously been increased each year in line with the percentage increase in the minimum wage.

The JHA commented that *"the policy of increasing accommodation and accommodation and food offsets largely in line with the percentage increase applied to the minimum wage has been welcomed by the hospitality industry,"* However, the JHA asked the Forum to consider increasing the accommodation offset given the cost of private sector accommodation; *"The Employment Forum is also requested to consider the impact on business and in that process to understand the realities in the marketplace i.e. the real costs of providing accommodation and food against the huge subsidies that hospitality businesses are currently providing for the same services in order to accommodate and feed 'live in' staff. We recognise that the provision of such does support business to some degree; however offsets must be increased in order to balance the real costs of providing these services and benefits."*

At the public meeting it was suggested that the levels of offset could be set at higher, more realistic levels to reflect the real cost of the benefits being provided. This would then allow the minimum wage to also be set at a higher rate so that employees who are not provided with staff accommodation can afford to rent accommodation at market rates. One hotelier noted however that this may be a disincentive for staff to 'live-in' which would ultimately have an impact on the

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housing market, with higher demand for private sector accommodation leading to higher prices.

One employer commented, *"If an employee 'lived out' they would be paying a lot more than the stated amounts (with or without food). It is their decision to 'live in' at the cost provided."*

Others felt that the maximum offsets were high enough; one hotelier said, *"8 of my staff are on minimum wage and live in, by agreement we are allowed to charge them £80.00 odd pounds a week for food and accommodation however if we charged this we would have no staff the maximum we can get is £40.00."*

An 'other' respondent commented, *"If the economy is to grow you must leave people with enough disposable income to spend in the economy otherwise it will send us in to a ressesion where by there is no money to circulate and you only spend the bare minimum to live"*

Paul Le Claire commented that *"Accomodation should not be tied to remuneration, it leads to servitude, low standards of accomodation and a control over the worker that is pervase. If the worker is paid in full then they might have a different choice on where they would wish to live and how. There ae too many people living in small portacabins in the country or shabby hotel accomodation where it is easy to have full time access to their labour."*

Around two-thirds of the ATW scheme respondents said that they would not be willing to allow their employer to make deductions from minimum wage pay for accommodation and/or meals, although many commented that they do not require or desire to live on-site or have these services provided to them. Just over half of the respondents would consider allowing a deduction for the provision of meals at around £1 per meal. Some commented that the amount of the deductions seemed fair.

The Forum recommends that, until data about minimum wage earners is available, the offsets should be increased proportionately to the minimum wage rate (a 2.5 percent increase), otherwise the effect of any increase in the minimum wage could be unpredictable.

The Forum recommends a maximum accommodation offset of £70.94 per week, and a maximum food and accommodation offset of £94.58 per week.

2012 REVIEW

In 2006, the Forum had decided that the minimum wage should be reviewed every two years, instead of annually, unless there were circumstances, such as economic changes, to suggest that an earlier review is necessary. The Forum intends to

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return to a bi-annual recommendation format in future years, but believes that the economic outlook for 2012 is not yet sufficiently clear to enable a recommendation to be made beyond April 2012.

The Forum has also recommended that research should be undertaken on specific topics, including minimum wage earners and trainees, the industries they work in, the types of contracts they work under, benefits in kind received, youth employment and displacement effects on older employees. The Forum intends to commission that research during the coming year, subject to the Social Security Minister agreeing to make appropriate resources available.

The Forum recommends that it will be necessary to review further evidence and the minimum wage in 2012.

SUMMARY OF RECOMMENDATIONS FOR 1 APRIL 2012

	2011	2012
Minimum Wage (per hour)	£6.32	£6.48
Trainee Rate (per hour)	£4.74	£4.86
Maximum weekly offset against minimum wage for accommodation	£69.21	£70.94
Maximum weekly offset against minimum wage for accommodation & food	£92.27	£94.58
Maximum weekly offset against trainee rate for accommodation	£69.21	£53.21
Maximum weekly offset against trainee rate for accommodation & food	£92.27	£70.94

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APPENDIX 1

Table - Adult Minimum Wages Relative to Full-time Median Earnings, by Country, Mid-2009.

Country	Percent
United States	35.5
Japan	36.2
Spain	37.8
Greece	41.9
Netherlands	43.5
Canada	43.8
Portugal	46
Belgium	50.8
Ireland	51.1
United Kingdom (LFS / ASHE)	52.2 / 46.1
Australia (LFS / ES)	54.4 / 51
France	59.8
New Zealand	60

Source: OECD estimates based on OECD minimum wage database and median earnings for full-time workers, mid-2009.

For the UK and Australia, two estimates of median earnings are available based on different surveys.

Explanatory Note

These Regulations amend the Employment (Minimum Wage) (Jersey) Regulations 2004 which specify how the value of an employee's total remuneration is to be calculated.

These Regulations increase the amounts that are to be taken into account in the calculation where the employer provides the employee with accommodation alone, or accommodation and food. The amounts are increased by 2.5%, and were last increased on 1st April 2011.

These Regulations also add reduced amounts to be taken into account for accommodation and food where the employee is a trainee. The reduced amounts are 75% of the full amounts, reflecting the fact that the minimum wage for a trainee is 75% of the full minimum wage.

These Regulations would come into force on 1st April 2012.



Jersey

DRAFT EMPLOYMENT (MINIMUM WAGE) (AMENDMENT No. 8) (JERSEY) REGULATIONS 201-

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 2003¹, have made the following Regulations –

1 Regulation 9 of the Employment (Minimum Wage) (Jersey) Regulations 2004 amended

For Regulation 9 of the Employment (Minimum Wage) (Jersey) Regulations 2004² there is substituted the following Regulation –

“9 Limits on amounts that may be taken into account for the 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 –
 - (a) in the case of an employee who is a trainee, £70.94 per week or £10.13 per day; and
 - (b) in any other case, £94.58 per week or £13.51 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 –
 - (a) in the case of an employee who is a trainee, £53.21 per week or £7.60 per day; and
 - (b) in any other case, £70.94 per week or £10.13 per day.”.

2 Citation and commencement

These Regulations may be cited as the Employment (Minimum Wage) (Amendment No. 8) (Jersey) Regulations 201- and come into force on 1st April 2012.

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- ¹ *chapter 05.255*
² *chapter 05.255.45*