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# **STATES OF JERSEY**



## **INTERNATIONAL LABOUR ORGANISATION REPORTS BY THE STATES OF JERSEY, JULY 2012**

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**Presented to the States on 1st October 2012  
by the Chief Minister**

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**STATES GREFFE**

**INTERNATIONAL LABOUR ORGANISATION REPORTS  
BY THE STATES OF JERSEY, JULY 2012 ON –**

**Minimum Age (Industry) Convention, 1919 (No. 5)**

**Minimum Age (Agriculture) Convention, 1921 (No. 10)**

**Protection against Accidents (Dockers) (Revised) Convention, 1932 (No. 32)**

**Freedom of Association and Protection of the Right to Organise, 1948 (No. 87)**

**Migration for Employment Convention (Revised), 1949 (No. 97)**

**Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**

**Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)**

## REPORT

For the period of 27th July 2007 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures taken to give effect to the provisions of the –

### **Minimum Age (Industry) Convention, 1919 (No. 5).**

The arrangements described in the 2007 Report in relation to legislation – the Education (Jersey) Law 1999 – are still applicable. In addition, there is further legislation subordinate to the Children (Jersey) Law 2002.

The relevant legislation is the –

Children (Regulation of Employment) (Jersey) Order 2011 ('the Children Order'), which deals with issues relating to the employment of children up to the age of 16 years.

[http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f12%2f12.200.65\\_Children\(RegulationofEmployment\)Order2011\\_RevisedEdition\\_1January2012.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f12%2f12.200.65_Children(RegulationofEmployment)Order2011_RevisedEdition_1January2012.htm)

### **Article 2**

Under the provisions of the Children Order at Article 2, no child under the age of 13 years may be employed in any capacity. The Children Order does not apply to children in work placements arranged or approved under Article 26(2) of the Education (Jersey) Law 1999.

Whilst the Children Order does not specifically prohibit all of the activities described in *industrial undertakings* by the Convention, it does prohibit any employment which is likely to be harmful to the child's safety, health or development. It also prohibits the following specific employment –

- Selling or delivering liquor
- Selling or delivering fuel oil
- Work which involves harmful exposure to physical, biological or chemical agents
- Any work where the child could fall from an elevation of 2 metres.
- Selling or delivering tobacco
- Collecting or sorting refuse

### **Article 3**

There are no technical schools in Jersey.

### **Article 4**

The prohibited employment described under Article 2 above by implication excludes children from working in an *industrial undertaking* and goes further by ensuring the safety, health and development of children is not compromised at Article 7. The requirement to keep a register of children working as such is therefore deemed unnecessary in this case.

The provisions of the legislation are administered by the Health and Social Services Department, with responsibility under the legislation being given to the Minister of that Department.

Enforcement has a joint agency approach between Health and Social Services, Education, Sport and Culture, and Home Affairs. This is overseen by the Children's Policy Group, a forum where these Departments are represented by their respective Ministers and Chief Officers.

## REPORT

For the period of 27th July 2007 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures taken to give effect to the provisions of the –

### **Minimum Age (Agriculture) Convention, 1921 (No. 10).**

The arrangements described in the 2007 Report in relation to legislation – the Education (Jersey) Law 1999 and the Children (Jersey) Law 2002 – are still applicable. In addition, there is further legislation subordinate to the Children (Jersey) Law 2002.

The relevant legislation is the –

Children (Regulation of Employment) (Jersey) Order 2011 ('the Children Order'), which deals with issues relating to the employment of children up to the age of 16 years.

[http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f12%2f12.200.65\\_Children\(RegulationofEmployment\)Order2011\\_RevisedEdition\\_1January2012.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f12%2f12.200.65_Children(RegulationofEmployment)Order2011_RevisedEdition_1January2012.htm)

#### **Article 1**

Under the provisions of the Children Order, no child under the age of 13 years may be employed in any capacity, and in addition, no child may be employed inside of school hours (Articles 2 and 3). The Order does not apply to children in work placements arranged or approved under Article 26(2) of the Education (Jersey) Law 1999.

The Order gives further protection at Article 4 to a child's ability to attend and be fit for school by –

- Permitting employment only within certain hours
- Restricting the number of hours per day and per week a child can work
- Restricting the number of days in a week a child can work
- Providing for rest periods and breaks including holidays.

#### **Article 2**

No work is permitted inside of school hours (Article 3).

#### **Article 3**

There are no technical schools in Jersey.

The provisions of the legislation are administered by the Health and Social Services Department, with responsibility under the legislation being given to the Minister of that Department.

Enforcement has a joint agency approach between Health and Social Services, Education, Sport and Culture, and Home Affairs. This is overseen by the Children's Policy Group, a forum where these Departments are represented by their respective Ministers and Chief Officers.

## REPORT

For the period 1st June 2007 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures to give effect to the provisions of the –

### **Protection against Accidents (Dockers) (Revised) Convention, 1932 (No. 32)**

#### **I.**

There have been no changes to the prescriptive Regulations, the Safeguarding of Workers (Cranes and Lifting Appliances) (Jersey) Regulations 1978, which set out requirements relating to the safety of persons working on vessels, and the Safeguarding of Workers (Chains, Ropes and Lifting Gear) (Jersey) Regulations 1980, which stipulate requirements for lifting gear.

#### **II. Article 12**

There has been an amendment to the principal occupational health and safety law, the Health and Safety at Work (Jersey) Law 1989 which, under Part 2 of the Law, sets out general duties for all those involved with working activities, including responsibility for addressing issues covered by the Convention (Article 3). The amendment clarifies the need for employers to carry out risk assessments and, for employers with 5 or more employees, to identify significant risks and the action taken to control them, in their health and safety policy. The amendment to Article 3 of the Health and Safety at Work (Jersey) Law 1989 came fully into force on 5th June 2010.

The Health and Safety at Work (Jersey) Law 1989, incorporating the amendment, can be accessed through the Jersey Law website –

[http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f05%2f05.300\\_HealthandSafetyatWorkLaw1989\\_RevisedEdition\\_1January2011.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f05%2f05.300_HealthandSafetyatWorkLaw1989_RevisedEdition_1January2011.htm)

with an explanation of the amendment available on the Inspectorate section of the States of Jersey website –

<http://www.gov.je/Government/Departments/SocialSecurity/HealthSafetyInspectorate/Updates/Archive/Pages/Riskassessmentfullyinforce.aspx>

#### **III – VI.**

No change.

## REPORT

For the period 1st July 2010 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures taken to give effect to the provisions of the –

### **Freedom of Association and Protection of the Right to Organise, 1948 (No. 87).**

#### **Specific responses:**

##### **I.**

There has been no change since the previous Report.

##### **II.**

There has been no change since the previous Report. The insular authorities provide the following response to the Observations of the Committee of Experts on the Application of Conventions and Recommendations:

#### **Observation, CEACR 2011/100th ILC Session**

In response to the Observations of the Committee of Experts on the Application of Conventions and Recommendations, the insular authorities can confirm that a review of the provisions of the Employment Relations (Jersey) Law 2007 ('the Employment Relations Law'), and accompanying codes of practice continues to be included in the Minister for Social Security's programme of work.

The insular authorities regret that the review is still pending and had hoped that more progress would have been made. The global economic downturn continues to have an impact on Jersey. As previously reported, recent political decisions have required that the insular authorities introduce statutory protection for workers in redundancy and insolvency situations in a shorter timescale than had been anticipated.

The insular authorities have met those requirements by introducing redundancy legislation (including statutory redundancy pay and collective consultation rights), and preparing legislation to provide financial compensation to employees who have been made redundant due to the insolvency of their employer. A new Minister for Social Security was appointed in November 2011.

The delay is regretted; however the review will be undertaken as soon as resources allow it. The insular authorities are grateful for the previous comments of the Committee and can confirm that the comments will be given due account in the review.

Jersey continues to have a very good industrial relations record. Since the Employment (Jersey) Law 2003 ('the Employment Law') came into force on 1st July 2005, there have been no claims to the Employment Tribunal of unfair dismissal or selection for redundancy on grounds of trade union membership or activities (Article 65).

The Employment Relations Law's minimalist and non-adversarial approach also reflects well in the figures released in the Jersey Advisory and Conciliation Service (JACS) Annual Report for 2011. During 2011, JACS was involved in 4 collective

mediations, all of which resulted in an agreed outcome. JACS also administered 4 pay and conditions ballots and acted as independent scrutineer for one trade union recognition ballot.

In the previous Report of the insular authorities, it was noted that JACS received 141 requests for advice in respect of collective disputes and trade union recognition during 2008. In 2011, this reduced to 97 such requests. This does not mean that JACS dealt with 97 disputes, as each dispute normally gives rise to a series of contacts as discussions progress.

JACS involvement includes acting as conciliators or mediators with both parties present, and also as an impartial third party to discuss and explore options to settle collective disputes. JACS Annual Report for 2011 notes that, while conciliation is not always successful in terms of helping the parties to reach an agreement, conciliation or mediation helps employers and employee representatives to focus on the key issues, and provides an opportunity for one side to reflect on the pressures or restrictions faced by the other. As a result, mediation often helps the parties to move towards a greater understanding of the other's point of view, allowing a solution to be reached at a later date.

#### **Articles 2 to 10**

There have been no changes since the previous Report.

#### **III.**

This is achieved by virtue of the common law right to associate for lawful purposes.

#### **IV.**

No such decisions have been given. Since the Employment Relations Law came into force on 21st January 2008, no collective or trade union recognition disputes have been referred to the Employment Tribunal. Since the Employment Law came into force on 1st July 2005, there have been no claims of unfair dismissal or selection for redundancy on grounds of trade union membership or activities.

#### **V.**

No observations to report.

#### **VI.**

Copies of these papers have been shared with Unite (the Union), Jersey branch, and the Jersey Chamber of Commerce.

## REPORT

For the period 27th July 2007 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures taken to give effect to the provisions of the –

### **Migration for Employment Convention (Revised), 1949 (No. 97).**

#### **I.**

There have been no changes in Jersey legislation in relation to the provisions of this Convention.

#### **II.**

### **Direct Request (CEACR) – adopted 2008, published 98th ILC Session (2009)**

The insular authorities provide the following response to the Direct Request of the Committee of Experts on the Application of Conventions and Recommendations:

#### *Article 6 – Equality of treatment, Minimum Wage*

Article 6 does not appear to require that legislative measures must be taken to prevent differential treatment, but that Member States undertake to apply no less favourable treatment to migrant workers than it applies to national workers.

Although a difference in treatment between employees with respect to religion is not prohibited by Article 17(7) and (8) of the Employment (Jersey) Law 2003 ('the Employment Law') in respect of the minimum wage Regulation-making powers, the Minimum Wage Regulations do not make any provisions for differential treatment between national and migrant workers on any grounds, including on grounds of religion. All employees aged over 16 are entitled to receive either the full minimum wage or the trainee rate.

The Committee has also requested information concerning equal treatment of foreign and national workers with respect to the other matters covered by Article 6(1)(a) to (d) of the Convention:

#### **6(1)(a)**

- (i) Part 3 of the Employment Law makes provisions for weekly (or fortnightly) rest periods and annual leave in which there is no distinction between migrant and national workers nor any provisions for less favourable treatment of migrant workers on grounds of nationality, race, religion or sex. The Employment Law makes no provision relating to hours of work, overtime arrangements or restrictions on home work for people over school-leaving age.
- (ii) Apprenticeships in Jersey relate to individuals attaining a technical qualification in a particular craft area, either through the Further Education College or through an off-Island training provider. To assist employers in employing and training these apprentices, the Economic Development Department currently manages a programme entitled the Jersey Apprenticeship Scheme. This is a grant-funded programme where employers receive monies to cross-subsidise both on-the-job and off-the-job training



costs for their apprentices. To access the funding, the employer's employee must meet 2 criteria: one of academic ability (this differs for each craft area) and the other relates to residency as follows:

*“To be eligible, prospective apprentices have to have been resident on the Island over a period of 5 years, either continuous or aggregated, prior to the commencement of the first year of the Apprenticeship Scheme, unless the family is residentially qualified.”*

Not everyone who attends the day release programmes, to attain the technical qualification, is on the Jersey Apprenticeship Scheme (it is not mandatory). Individuals, however long they have been in the Island, can attend the day release programme and pay the course fee, however the employer is not subsidised.

- (iii) The Employment Relations (Jersey) Law 2007 and Employment Law apply no distinction between migrant and national workers, and so there is no less favourable treatment of migrant workers on grounds of nationality, race, religion or gender in terms of the membership of trade unions and collective bargaining.

**6(1)(b)**

Nationality cannot be used as an eligibility criterion for participation in contributory or non-contributory benefit schemes.

Contributory benefits (Social Security (Jersey) Law 1974) are accessible by the payment of contributions, and contain provisions for acquired rights and rights in the course of acquisition, which are further protected by the negotiation of reciprocal agreements (Article 48). Contribution conditions are satisfied following payment of contributions for 3 months, but through reciprocal agreements, these can be satisfied on starting work in Jersey. Contributions paid for less than a year may also be transferred to countries to protect individual payment.

Anyone who lawfully satisfies the residency conditions falls under Article 3 of the Social Security (Jersey) Law 1974 ('the Social Security Law') and so is an insured person who is liable to pay contributions. The residency conditions are prescribed under Article 2 of the Social Security (Residence and Persons Abroad) (Jersey) Order 1974. Once a person is an insured person, then they are eligible to claim any benefit stipulated under Article 12 of the Social Security Law provided that they have satisfied the relevant contribution conditions under Article 14 and Schedule 2 of the Social Security Law.

Anyone lawfully ordinarily resident in Jersey who satisfies the eligibility criteria stipulated under Article 2 of the Income Support (Jersey) Law 2007 is entitled to claim income support.

**6(1)(c)**

There is equal treatment in respect of foreign and national workers with respect to employment taxes due or contributions payable in respect of the person employed.

**6(1)(d)**

Provisions for legal proceedings apply to both national and migrant workers, irrespective of race, nationality, religion and sex.

*Article 6 – Scope of protection, Private household employees*

- (a) The Committee has noted that the Employment Law does not apply to the employment of a person where their work relates to the employer's family household, but only where 3 other specific conditions are met; by virtue of the fact that the person works in the family household and is treated as part of the family, shares accommodation and meals (at no cost), and shares in tasks and leisure activities as part of the family. The Committee has requested statistical information, disaggregated by sex and nationality, on the numbers of national and foreign workers employed in private households.

It is anticipated that the majority of people who work in private households would be protected by the Employment Law, as most would not reside in the family home (e.g. domestic cleaners). Workers employed in private households who are also likely to meet the 3 additional conditions, particularly living in the family home, are 'au pairs'. The total number of au pairs recorded by the Social Security Department as working in Jersey during 2010–2012, broken down by nationality, was –

Nationality	2010	2011	2012
Austrian	1	0	0
Belgian	1	0	0
German	1	1	0
Hungarian	2	0	0
Icelandic	0	0	1
Filipino	1	1	1
Portuguese	1	0	0
Romanian	0	0	1
Spanish	2	2	2
Swedish	2	0	2
<b>TOTAL</b>	<b>11</b>	<b>4</b>	<b>7</b>

All recorded au pairs were female, except one male German national in 2010 and 2011.

- (b) The Employment Law provides no difference in treatment between migrant and national workers in the right to paid holidays and minimum wage on any grounds, including race, nationality, religion and sex (Article 17). Both migrant and national workers who are employed in private households have the right to paid holidays and the minimum wage, unless the worker (whether a migrant or national worker) is excluded by Article 1(5) of the Employment Law. An employee of a private household who simply resides in that household, but does not meet the other conditions, is not excluded from the protection of the Employment Law.

Compliance Officers of the Social Security Department are empowered to inspect employers' records for the purpose of enforcing certain requirements of the Employment Law, including the minimum wage (Article 97). A total of 388 employer surveys were undertaken in 2011; 55 employers with domestic employees (not necessarily with 'live-in' employees) were surveyed, none of which had a minimum wage issue. Twelve surveys found issues with contracts of employment. This might include a failure to issue a contract of employment, and where a contract does not comply with the Employment Law.

The Jersey Advisory and Conciliation Service (JACS) is available to both migrant and national workers to deal with complaints, settle employment disputes, give impartial, professional advice and provide free leaflets and booklets. JACS estimates dealing with a maximum of 5 requests for advice each year from employees working in (but not necessarily living in) private households in roles such as child care, care of elderly people and housekeeping.

*Annex II and Article 3 – Private recruitment agencies and misleading propaganda*

The Minister for Social Security has received no complaints regarding unsatisfactory agency service pursuant to the Employment Agencies (Registration) Code of Conduct (Jersey) Order 1970.

*Articles 3, 4 and 6 – Misleading propaganda and equality of treatment. Measures to facilitate departure*

The insular authorities will consider reviewing the legislation relating to equality of treatment between male and female migrant workers with respect to the migration process, when resources allow it.

**III.**

No change.

**IV.**

There have been no decisions of the Jersey Employment Tribunal or the Social Security Tribunal dealing with questions of principle relating directly to this Convention.

**V.**

No change.

**VI.**

Copies of these papers have been shared with Unite (the Union), Jersey branch, and the Jersey Chamber of Commerce.

## REPORT

For the period 1st July 2010 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures taken to give effect to the provisions of the –

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**

#### **Specific responses:**

##### **I.**

There has been no change since the previous Report.

##### **II.**

There has been no change since the previous Report.

The Jersey Advisory and Conciliation Service (JACS) continues to operate as stated in the insular authorities' previous Report; promoting the improvement of industrial relations in Jersey by settling employment disputes through conciliation, mediation or arbitration.

Jersey continues to have a very good industrial relations record. The minimalist and non-adversarial approach of the Employment Relations (Jersey) Law 2007 ('the Employment Relations Law'), reflects well in the figures released in the Jersey Advisory and Conciliation Service (JACS) Annual Report for 2011. During 2011, JACS was involved in 4 collective mediations, all of which resulted in an agreed outcome. JACS also administered 4 pay and conditions ballots and acted as independent scrutineer for one trade union recognition ballot.

In the previous Report of the insular authorities, it was noted that JACS received 141 requests for advice in respect of collective disputes and trade union recognition during 2008. In 2011, this reduced to 97 such requests. This does not mean that JACS dealt with 97 disputes, as each dispute normally gives rise to a series of contacts as discussions progress.

JACS involvement includes acting as conciliators or mediators with both parties present, and also as an impartial third party to discuss and explore options to settle collective disputes. JACS Annual Report for 2011 notes that, while conciliation is not always successful in terms of helping the parties to reach an agreement, conciliation or mediation helps employers and employee representatives to focus on the key issues and provides an opportunity for one side to reflect on the pressures or restrictions faced by the other. As a result, mediation often helps the parties to move towards a greater understanding of the other's point of view, allowing a solution to be reached at a later date.

#### **Observation, CEACR 2011/100th ILC Session**

The insular authorities provide the following response to the Observations of the Committee of Experts on the Application of Conventions and Recommendations:

*Article 1**Protection against acts of anti-union discrimination*

In 2008, the independent consultation body, the Employment Forum, consulted publicly on the proposed amendment to the Employment (Jersey) Law 2003 ('the Employment Law') relating to re-employment. The Forum is made up of 3 employer, 3 employee and 3 independent members, and consults a wide range of interested parties, including trade unions, staff associations and employers' associations.

Following consultation, the Forum recommended to the Minister for Social Security that the Employment Tribunal should not have the power to compensate an employee for any financial losses, such as arrears of pay, for the period between the dismissal and the order for re-employment, until such a time as a review of the award-making powers of the Employment Tribunal can be undertaken, which would include a review of how compensatory sums are calculated in other jurisdictions.

As currently drafted, the Employment (Awards) (Jersey) Order 2009 provides that the award for unfair dismissal is a fixed award based on salary and length of service (Article 3). There is no option for an employee to seek additional compensation for financial losses following an unfair dismissal; only contractual and statutory sums owed up to the date of dismissal.

The Minister accepted the Forum's concern that, given that equivalent financial compensation is not available to unfairly dismissed employees who are not seeking re-employment at this time, the opportunity to receive additional compensation on these grounds may lead employees to seek re-employment as a matter of course, resulting in a reduced number of pre-hearing settlements.

*Articles 2 and 4**Protection against acts of interference and promotion of collective bargaining*

The insular authorities continue to prepare the provisions that will be necessary to prohibit employer inducements to encourage employees to give up trade union representation.

*Recognition of trade unions (code 1)*

Code 1 will be reviewed in relation to the rights under this Convention as part of the proposed wider review of the Employment Relations Law and codes of practice.

The insular authorities regret that provisions to prohibit employer inducements and a review of the Employment Relations Law and codes of practice are pending. The global economic downturn continues to have an impact on Jersey. As previously reported, recent political decisions have required that the insular authorities introduce statutory protection for workers in redundancy and insolvency situations in a shorter timescale than had been anticipated. A new Minister for Social Security was appointed in November 2011.

The delay is regretted; however the review will be undertaken as soon as resources allow it.

**III.**

No such decisions have been given.

Since the Employment Relations Law came into force on 21st January 2008, no collective or trade union recognition disputes have been referred to the Employment Tribunal.

Since the Employment Law came into force on 1st July 2005, there have been no claims of unfair dismissal or selection for redundancy that relate to trade union membership or activities. There have, therefore been no orders for reinstatement or re-engagement resulting from unfair dismissal, or selection for redundancy on grounds of trade union membership or activities.

**IV.**

No observations to report.

**V.**

Copies of these papers have been shared with Unite (the Union), Jersey branch, and the Jersey Chamber of Commerce.

## REPORT

For the period 27th July 2007 to 31st May 2012, made by the States of Jersey, in accordance with Article 22 of the Constitution of the International Labour Organisation, on measures taken to give effect to the provisions of the –

### Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99).

#### I.

Employment (Minimum Wage) (Jersey) Regulations 2004

[www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f05%2f05.25.5.45\\_Employment\(MinimumWage\)Regulations2004\\_RevisedEdition\\_1January2012.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f05%2f05.25.5.45_Employment(MinimumWage)Regulations2004_RevisedEdition_1January2012.htm)

Employment (Minimum Wage) (Amendment No. 8) (Jersey) Regulations 2012

[www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2012%2fR%26O-008-2012.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2012%2fR%26O-008-2012.htm)

Employment (Minimum Wage) (Jersey) Order 2007

[www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f05%2f05.25.5.40\\_Employment\(MinimumWage\)Order2007\\_RevisedEdition\\_1January2012.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f05%2f05.25.5.40_Employment(MinimumWage)Order2007_RevisedEdition_1January2012.htm)

Employment (Minimum Wage) (Amendment No. 5) (Jersey) Order 2012

[www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2012%2fR%26O-013-2012.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2012%2fR%26O-013-2012.htm)

#### II.

There have been no changes since the previous Report, other than those described below. The insular authorities' responses to the Direct Requests of the Committee of Experts on the Application of Conventions and Recommendations: (CEACR – adopted 2007, published 97th ILC Session (2008)) are also included below in respect of each Article.

#### Article 2

The maximum amounts that may be counted in determining whether the minimum wage has been paid, and the minimum wage rates that have applied since 2008, are detailed in the table shown below –

	2008	2009	2010	2011	2012
Minimum Wage (per hour)	£5.80	£6.08	£6.20	£6.32	£6.48
Trainee Rate (per hour)	£4.35	£4.56	£4.65	£4.74	£4.86
Maximum weekly offset against minimum wage for accommodation	£63.47	£66.52	£67.85	£69.21	£70.94
Maximum weekly offset against minimum wage for accommodation and food	£84.63	£88.69	£90.46	£92.27	£94.58
Maximum weekly offset against trainee rate for accommodation	£63.47	£66.52	£67.85	£69.21	£53.21
Maximum weekly offset against trainee rate for accommodation and food	£84.63	£88.69	£90.46	£92.27	£70.94

*Direct Request, Article 2 – Partial payment of wages in kind*

Whilst the primary legislation allows that provision may be made for determining the hourly rate of pay in cases where pay consists wholly of benefits in kind, further legislative provision would have to be made for that to apply in practice. If any such legislation were to be proposed, however, the Employment Forum would first have to be consulted and draft legislation would be subject to the approval of the Minister for Social Security, and the States of Jersey.

As the Committee has noted, Regulations made under Article 17(2)(d) of the Employment (Jersey) Law 2003 ('the Employment Law') permit accommodation, or accommodation with meals, as the only benefits in kind that may be counted in determining the hourly rate of pay. It is the Forum's responsibility to ensure that the maximum offsets are appropriate based on the local economic situation. It is not the intention of the Forum or the Minister for Social Security to propose to extend the benefits in kind that may be counted when determining minimum wage pay beyond partial payment of minimum wage.

In both its 2010 and 2011 minimum wage recommendations, the Forum has recommended that the benefits in kind should not be more flexible, and that it should only be permissible for an employer to offset accommodation, or accommodation with 3 meals each day, against minimum wage pay.

**Article 3**

The Employment Forum continues to have a statutory duty under the Employment Law (at Article 18) to consult organisations that are representative of workers and employers, as well as to consider competitiveness, jobs and the economy, in making its recommendations to the Minister for Social Security.

The Employment Forum conducts wide-ranging public consultations, which include direct consultation with a database of approximately 250 consultees. The database includes a wide cross-section of interested parties, including trade unions, staff associations, employers, employers' associations, employees, independent organisations, and advisory bodies. The Forum considers all representations, both in writing and orally.

*Direct Request, Article 3(3) – Participation of representatives of employers' and workers' organisations on a basis of complete equality*

The Committee has requested continued information on the minimum wage fixing activities of the Employment Forum. The Forum's latest consultation was undertaken during June to August 2011; 72 written responses were received from a range of respondents and industries and a public meeting was held. The Minister accepted the Forum's recommendations and made the necessary legislative changes which came into force on 1st April 2012. Full details of the Forum's previous consultations and recommendations on the Minimum Wage are available on the website:

[www.gov.je/minimumwage](http://www.gov.je/minimumwage).



*Direct Request, Article 3(4) – Minimum wage not subject to abatement*

Whilst the Minimum Wage Regulations in force at the time of the Insular Authorities' previous Report provided for the possibility of a lower hourly rate of pay to be set for employees who have not attained 18 years of age, an Order was not made under that Regulation and the provision was never applied in practice. Regulation 4 was amended in 2008 to remove the power to make an Order setting a different hourly rate of pay for employees under age 18, since which time, Orders have been made only in respect of setting lower hourly rates for trainees.

**Article 5**

The minimum wage rates that have been implemented on 1st April each year since 2008 are shown in the table provided in respect of Article 2.

Data from Jersey's most recent (2009/2010) Income Distribution Survey<sup>1</sup> allows the number of minimum wage earners in Jersey 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 industries, particularly seasonal workers.

The current minimum wage system was developed on the premise that the majority of minimum wage earners work in the hospitality and agriculture industries and live in tied accommodation. According to Jersey's latest labour market report (for December 2011<sup>2</sup>), a combined total of 11% of the labour market – around 5,900 people – were employed in hotels, restaurants and bars, and agriculture and fishing, a proportion of whom are minimum wage earners. There is also evidence from the Forum's consultation that the minimum wage is paid, perhaps to a lesser extent, to employees working in services, fulfilment and retail.

Jersey's Average Earnings<sup>3</sup> survey will be undertaken in June/July 2012 which, for the first time this year, will provide data about the number of minimum wage earners in different industries in the Island. Earnings data is collected for a large representative sample of firms in the private sector, covering nearly two-thirds of Jersey's working population, as well as all public sector departments.

Compliance Officers of the Social Security Department are empowered to inspect employers' records for the purpose of enforcing certain requirements of the Employment Law, including the minimum wage (Article 97). Details of relevant inspections are listed below. Where minimum wage issues were identified by Officers, the employers resolved those issues. No Penalty or Enforcement Notices were issued by Officers of the Department in any of the following years –

A total of 265 surveys were undertaken in 2007; 14 employers in the agriculture sector were surveyed, 2 of which had minimum wage issues.

A total of 396 surveys were undertaken in 2008; 12 employers in the agriculture sector were surveyed, one of which had a minimum wage issue.

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<sup>1</sup> [www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20IDS200910%2020100927%20SU.pdf](http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20IDS200910%2020100927%20SU.pdf)

<sup>2</sup> [www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20LabourMarketDec2011%2020120328%20SU.pdf](http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20LabourMarketDec2011%2020120328%20SU.pdf)

<sup>3</sup> [www.gov.je/Government/JerseyWorld/StatisticsUnit/EmploymentEarnings/Pages/Earnings.aspx](http://www.gov.je/Government/JerseyWorld/StatisticsUnit/EmploymentEarnings/Pages/Earnings.aspx)

A total of 265 surveys were undertaken in 2009; 15 employers in the agriculture sector were surveyed, none of which had minimum wage issues.

A total of 338 surveys were undertaken in 2010; 12 employers in the agriculture sector were surveyed, one of which had a minimum wage issue.

A total of 388 surveys were undertaken in 2011; 21 employers in the agriculture sector were surveyed, none of which had a minimum wage compliance issue.

*Direct Request, Article 5 and Part 5 of the Report form*

As suggested by the Committee, the Government will consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131).

**III.**

There has been no change since the previous Report.

**IV.**

There have been no decisions of the Jersey Employment Tribunal dealing with questions of principle relating directly to this Convention.

**V.**

Details of inspections are included under Part 2 of the Report form.

**VI.**

Copies of this Report have been sent to the Jersey Chamber of Commerce and Unions (the Union), Jersey branch.

**Response to Direct Request, CEACR 2003/74th Session**

The Employment Forum became a statutory body when the Employment (Jersey) Law 2003 (“the Employment Law”) came into force on 1st July 2005.

Subordinate legislation setting the minimum wage is in place under the Employment Law: the Employment (Minimum Wage) (Jersey) Order 2007 and the Employment (Minimum Wage) (Jersey) Regulations 2004, as amended by the Employment (Minimum Wage) (Amendment No. 2) (Jersey) Regulations 2007.

The relevant legislation is attached with the main Report.

The Minimum Wage Order applies to all employees who have ceased to be of compulsory school leaving age (over 16). All employees aged over 16 are entitled to receive either the full minimum wage, or a lower trainee rate, which can be paid to an employee who is undergoing “accredited” training for a maximum period of one year, in a new job, with a new employer. Accreditation of training is via the approval of the Minister for Social Security or meeting the requirements of a code of practice, as explained more fully in the attached Report relating to Article 5.

The basis upon which wages may be partially paid in the form of allowances in kind is explained fully in the attached Report in the paragraphs relating to Article 2. In summary, only the provision of accommodation, or food and accommodation may be taken into account in determining whether the minimum wage has been paid and a maximum value is attributed to each of those benefits.