

## **SOCIAL SECURITY MINISTER'S RESPONSE TO THE EMPLOYMENT FORUM'S MINIMUM WAGE RECOMMENDATIONS FOR APRIL 2007**

**The Social Security Minister accepts the Employment Forum's recommendations for 1<sup>st</sup> April 2007, which are summarised in the table below;**

	1 <sup>st</sup> April 2006	1 <sup>st</sup> April 2007
Minimum Wage	£5.24	<b>£5.40</b>
Trainee Rate	£3.94	<b>£4.05</b>
Youth Rate	none	<b>£4.05</b>
Accommodation offset	£57.32	<b>£59.10</b>
Accommodation and food offset	£76.43	<b>£78.80</b>

### **1. TIMING AND METHOD OF UPDATING**

- 1.1. The Minister understands that 1<sup>st</sup> April has now become an established date and agrees with the Forum's recommendation that the minimum wage should continue to be updated on that date.
- 1.2. The Minister recognises the importance of setting the minimum wage further in advance in order to give businesses more notice of new rates to assist in setting prices, and accepts the Forum's recommendation that in order to do this effectively, a formula should be used in future.

### **2. MINIMUM WAGE**

- 2.1. The Minister understands that, in making its recommendation, the Forum has taken account of the Economic Advisers advice regarding the States inflation policy (with a target of a 2% growth across the whole economy) and his recommended caution regarding the effect of minimum wage increases on the competitiveness of export driven industries, such as Tourism and Agriculture.
- 2.2. The Minister was interested to note that, although responses varied on what rate the minimum wage should be set at, the range was not as wide as might have been expected; three respondents saying there should be no change to the current minimum wage rate, three suggesting relatively

high rates between £6.08 and £7.72, and the other 14 responses ranging within a more limited £5.37 to £5.62.

- 2.3. The Minister accepts the Forum's recommendation that the minimum wage from 1<sup>st</sup> April 2008 should be set by reference to 40% of the overall average earnings, as released in the June 2007 average earnings statistics.
- 2.4. The Minister accepts the Forum's recommendation for a minimum wage of £5.40 to apply from 1<sup>st</sup> April 2007. The Minister understands that the process of re-basing the minimum wage to a formula has resulted in an increase of one pence less than it would have been, had the June 2006 average earnings index of 3.3% been applied.
- 2.5. The Minister accepts the Forum's recommendation that, after the 2008 minimum wage rate has been set by the June 2007 average earnings data, the appropriateness of this method and the percentage of average earnings used in the formula should be re-assessed via an internal review, to be conducted by the Forum, before it is utilised to recommend a rate for 1<sup>st</sup> April 2009.
- 2.6. The Minister supports the Forum in its aim to gradually increase the percentage of the average earnings used in the formula towards 45%, and agrees that this should be taken into account by the Forum in its 2007 internal review of the uprating formula.

### **3. TRAINEE RATE**

- 3.1. The Minister accepts the Forum's suggestion that, as a specific method for uprating the minimum wage for two years is being proposed, it would be appropriate to return to the initial method of setting the trainee rate, which is 75% of the full minimum wage rate.
- 3.2. The Minister accepts the Forum's recommendation for a trainee rate of £4.05 for April 2007.
- 3.3. The Minister also accepts the Forum's recommendation that the trainee rate should be set at 75% of the full minimum wage for April 2008, following the release of the June 2007 average earnings index.
- 3.4. The Minister accepts the Forum's recommendation that where students are undertaking a "work experience placement" as an educational requirement within an academic establishment, or as a requirement of a full time training course, they should not be "employees", and therefore not entitled to the minimum wage, trainee rate or youth rate.

The Minister intends to seek legal advice in order to clarify and address this situation accordingly.

#### **4. YOUTH RATE**

- 4.1. The Minister noted the level of support for a youth rate, the consultation responses suggesting that employers are discouraged from offering young people work experience during the school holidays when they can employ an adult with more experience for the same rate of pay, particularly where an employee under the age of 18 cannot fulfil the full responsibilities of an adult job, such as legal restrictions where the sale of alcohol is required.
- 4.2. The Minister also noted the perceived unfairness, created by the necessarily limited criteria required to pay the trainee rate; specifically, when inexperienced school holiday staff must be paid more than employees who are undergoing accredited in a full time position.
- 4.3. The Minister accepted the Forum's recommendation for a youth rate of £4.05, to apply from 1<sup>st</sup> April 2007 to employees aged between 16 and 18, who are in full time education and undertaking work during the holidays, week-ends, or before or after school.
- 4.4. The Minister accepts the Forum's recommendation that guidelines should set out in what circumstances the youth rate applies. This should include what constitutes "full time education" (to exclude work experience placements as discussed in 3.4), and specifying that the full-time education must be undertaken in Jersey.
- 4.5. The Minister supports the Forum's proposal to take into account the availability of a youth rate in considering whether to propose greater increases in the minimum wage rate in future.

#### **5. ACCOMMODATION AND FOOD**

- 5.1. The Minister accepts the Forum's recommendation that the accommodation and food offsets should be increased proportionately to the minimum wage rate for 2007, to give a maximum accommodation offset of £59.10, and a maximum food and accommodation offset of £78.80.
- 5.2. The Minister notes the Forum's suggestion that it must be ensured that employers are aware that the legislation does not allow an offset for food where accommodation is not provided, or a reduced offset where only two

meals per day are provided, and proposes to request that the JACS guidelines clarify this.

- 5.3. The Minister notes concerns regarding charges levied by some employers for utility bills, in addition to the offset for accommodation, which is contrary to the intention that only two benefits may be off set against the minimum wage. A UK Employment Appeal Tribunal has decided that the accommodation offset **includes** charges made by the employer for electricity and gas; however the judgement has been appealed to the Court of Appeal and is due to be heard in January 2007. The Minister accepts the Forum's recommendation that advice and enforcement should be based on the outcome of this appeal, when it becomes available.

## 6. THERAPEUTIC WORK

- 6.1. The Minister accepts the Forum's comments regarding therapeutic workers and understands that no recommendation is made at this time.

## 7. OTHER ISSUES

The Minister considered a number of additional issues that had been addressed by the Forum.

- 7.1. **Tips** - The Minister understands the concern that it is unfair that tips and gratuities, when processed through payroll, can be used by the employer to form part of the Minimum Wage, however notes that the situation is the same in the UK and the Isle of Man. The Minister accepts the Forum's conclusion that there is no simple solution to this matter and that the Forum has not made a recommendation to address this, as to oblige employers to re-distribute tips received via the payroll would be very difficult to monitor or enforce.
- 7.2. **Pay Slips** - The Minister notes the Forum's advice that an amendment should be made to the Employment Law to ensure that employers must give pay slips to their employees, not only when requested by the employee, and that the pay slip must include a record of the number of hours worked (actual and contractual) in each pay reference period. This is intended to prevent disputes arising where an employer has paid a flat weekly wage, despite the employee having worked additional hours. The Minister will take advice on what action might be taken to address these two issues.

7.3. **Variable Hour Contracts** - The Minister accepts the Forum's suggestion that drafting and legal advice should be obtained on the issue of "pay reference periods" where employees are paid a regular weekly wage, but a "variable hour" system is operated over a monthly period. As the Forum suggests, the Minister will consider how the law might be amended to provide the flexibility for pay reference periods for weekly paid employees to be averaged over "one calendar month", if agreed by the employer and employee in a relevant agreement.

7.4. **Trainee rate and offsets** - The Minister recognises that it is currently possible for employers to offset an amount for accommodation, or accommodation and food, against the trainee rate and agrees to take action to prevent this, particularly in view of the proposal to introduce a youth rate, to ensure that the offsets may only be used when an employee is being paid at least the full minimum wage.