

# **RECOMMENDATION - MINIMUM WAGE RATES FOR 1<sup>st</sup> APRIL 2010**



Issued by the Employment Forum on 27 October 2009

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## **PURPOSE OF RECOMMENDATION**

This recommendation is the outcome of the Employment Forum's fourth review of the minimum wage, the main purpose of which is to recommend a minimum wage rate to take effect from 1<sup>st</sup> April 2010, as well as making recommendations in regard to three specific issues; tips and gratuities, benefits in kind, and a student or youth rate.

## **SUMMARY**

Section 1 – Background

Section 2 – Minimum wage rates in other jurisdictions

Section 3 - Consultation procedure

Section 4 – Recommendations

Appendix 1 – Adult Minimum Wages Relative to Median Earnings, by Country

Appendix 2 - Unemployment in young people

If you wish to receive an electronic copy of this recommendation, please contact the Secretary, or download it from the States website -

[www.gov.je/ChiefMinister/PublicConsultations](http://www.gov.je/ChiefMinister/PublicConsultations)

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## SECTION 1 - BACKGROUND

The original report to the States on 'Minimum Wage Legislation' (P.227/1998) was debated by the States and approved in March 1999. It was based on research carried out in 1997, and provided for the introduction of a minimum wage and trainee wage, and the establishing of an independent body (the Employment Forum) which would act as a consultative body, to monitor the economic impact of the minimum wage and to make recommendations to the former Employment and Social Security Committee.

The Employment Forum's first Minimum Wage Recommendation was issued in October 2003 (further details are provided in Section 3 of the Forum's "Background document" to the recent consultation paper<sup>1</sup>). Based on those recommendations, a Report was presented to the States by the former Committee in January 2004, which provided information regarding the proposed minimum wage rate.

In July 2004, the States of Jersey approved the subordinate legislation required to bring the minimum wage into force under the Employment Law. The Employment (Minimum Wage) (Jersey) Regulations 2004 and the Employment (Minimum Wage) (Jersey) Order 2004 came into force on the same date as the Employment Law (1 July 2005) which provided the legislative framework for the minimum wage and formalised the Employment Forum.

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

	April 2005	April 2006	April 2007	April 2008	April 2009
Minimum Wage	£5.08	£5.24	£5.40	£5.80	£6.08
Trainee Rate	£3.82	£3.94	£4.05	£4.35	£4.56
Accommodation offset	£55.65	£57.32	£59.10	£63.47	£66.52
Accommodation and food offset	£74.20	£76.43	£78.80	£84.63	£88.69

## The 2008 Minimum Wage Recommendation

Following its October 2008 minimum wage review, the minimum wage was calculated by reference to 40.5 percent of average weekly earnings and the Forum recommended the resulting minimum wage of £6.08 to apply from 1 April 2009.

<sup>1</sup> [www.gov.je/SocialSecurity/Employment/Employment+Relations/Reviewing+the+Minimum+Wage/MinWageConsultation.htm](http://www.gov.je/SocialSecurity/Employment/Employment+Relations/Reviewing+the+Minimum+Wage/MinWageConsultation.htm)

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The Forum had concluded that there is no single correct method of increasing minimum wages. Taking into account its previous commitment to raise the bottom end of earnings, the Forum recommended a half of one percent increase in the formula that had been applied in the previous year.

The accommodation and food offsets were increased proportionately to the minimum wage rate and the trainee rate was set at 75 percent of the minimum wage.

During that consultation process a number of other issues had been raised which the Forum concluded would require more detailed consideration. Each of the following issues has been address in the current review and will be discussed in more detail in Section 4 of this recommendation:

1. Whether an employer should be permitted to use tips and gratuities to pay, or partially–pay, an employee’s minimum wage per hour.
2. Whether there is any evidence that a student or youth rate is necessary to prevent young people loosing out on work experience opportunities.
3. Whether the offsets should be more flexible in terms of which benefits in kind an employer may offset against minimum wage pay.

## **SECTION 2 – OTHER JURISDICTIONS**

### **UK**

On 1 October 2009, following the latest recommendation from the Low Pay Commission, the minimum wage rates were increased by 1.2 percent, as follows.

- For adult workers, the rate per hour will increase by seven pence to £5.80. From 1 October 2009, the adult rate must be paid to workers aged 21+, not age 22+ as currently.
- The Youth Development Rate will increase by six pence to £4.83
- The rate for workers aged 16 to 17 will increase by four pence to £3.57
- The maximum Accommodation offset will increase from £31.22 per week to £31.57 per week.

The Chairman of the Low Pay Commission, George Bain said *“These are very challenging times for the UK and unprecedented economic circumstances for the minimum wage. We believe that the Low Pay Commission’s recommendations are appropriate for this economic climate. They reflect the need to protect low-paid workers’ jobs as well as their earnings.”*

The increase will benefit nearly one million workers, two thirds of whom will be women. The reduced threshold for the adult rate will benefit around 50,000 21 year olds this year. Although this represents a modest increase of 1.2 percent, the UK’s

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Trades Union Congress views the decision to increase the minimum wage as one of the Governments greatest successes.<sup>2</sup>

Over the last ten years, the UK's minimum wage has increased by 61.1 percent. This compares to 52.1 percent growth in average earnings and a 34.9 percent increase in the Retail Price Index (excluding housing costs) over the same period. The median weekly earnings reported in the UK for April 2008 was £479. Based on a 40 hour working week, the UK's hourly minimum wage of £5.80 represents 48.43 percent of the median weekly earnings.

## **Isle of Man**

The Isle of Man's Minimum Wage Committee ('the Committee') has delayed its recommendation to the Minister for Trade and Industry, which has meant that the minimum wage has not been increased from 1 October (as in previous years).

Public consultation undertaken this year provided little information about the impact on those receiving the minimum wage and so the Committee asked the Department of Trade and Industry to conduct a more detailed study. That impact study is currently underway, surveying 1,300 businesses and individuals and the outcomes will be considered by the Committee shortly in making its recommendations.

Any changes to the minimum wage will occur on 1 April each year in the future. As well as allowing time for the consideration of the outcomes of the impact study, this will also align minimum wage changes with the changes to social benefit rates on 1 April each year.

In October 2008, the adult minimum wage was increased but the minimum wage rates for workers aged 16 to 18 and the accommodation offset were frozen at 2007 rates. These rates will continue to apply, at least until 1 April 2010;

- Adult workers (18 and over) - £6.00 per hour
- 17 year olds and certain trainees –£5.24
- 16 year olds – £4.67 per hour
- Accommodation offset – £36.40 maximum per week

The average weekly earnings reported in the Isle of Man for June 2008 was £569. Based on a 40 hour working week, the hourly minimum wage of £6.00 represents 42.18 percent of the average weekly earnings.

## **Guernsey**

Guernsey does not currently have a minimum wage, however following a consultation process in 2007, the Commerce and Employment Department proposed that minimum wage legislation should be implemented in Guernsey.

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<sup>2</sup> [http://www.tuc.org.uk/em\\_research/tuc-17037-f0.cfm](http://www.tuc.org.uk/em_research/tuc-17037-f0.cfm)

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The States of Guernsey has approved the Minimum Wage (Guernsey) Law, 2009 which is currently waiting Royal Assent at Privy Council. Public consultation has been undertaken and the Commerce and Employment Department will consider the outcomes prior to recommending minimum wage rates to the States for final approval.

The legislation will include an Adult Rate for employees aged 19 and over, and a Young Persons Rate for employees aged 16 to 18. Apprentices under the age of 19 will not be subject to the minimum wage protection. Apprentices who commence their apprenticeships when they are over 19 (or part of the year during which they become 19) will not be protected during the first year of their apprenticeship, after which the appropriate Adult minimum wage will apply.

The legislation will come into force when Royal Assent has been granted and the minimum wage rate Regulations have been put to the States of Guernsey for final approval.

## **SECTION 3 – CONSULTATION PROCEDURE**

Full details of the Forums previous consultations and recommendations on the minimum wage can be obtained from the Forum Secretary and are available on the website -

[www.gov.je/SocialSecurity/Employment/Employment+Services/Employment+Relations/The+Employment+Forum.htm](http://www.gov.je/SocialSecurity/Employment/Employment+Services/Employment+Relations/The+Employment+Forum.htm)

This year's consultation was conducted slightly differently than in previous years, as the Forum hoped to obtain responses from those who are directly affected by the minimum wage, in particular employees in the Hospitality and Agriculture industries. In addition to a background document, three separate questionnaires were provided as booklets. Questionnaire 1 was aimed at individual employees who are being paid at (or near to) the minimum wage and it was available in Polish and Portuguese. Two advisory bodies and a small number of employers, in particular in the Hospitality and Agriculture industries, agreed to make the questionnaire available to their staff either through a notice board staff representative.

Questionnaire 2 was aimed at all other respondents, including employers; large and small in all industries, independent advisory bodies, trade unions, employee associations, employer associations, trade representative bodies, any individual employee who receives more than the minimum wage and other interested parties.

Questionnaire 3 was not distributed with the main minimum wage review papers as it was directed specifically at students. The questionnaire was circulated to around 500-600 students across secondary schools in Jersey with the assistance of careers teachers and the Careers and Work Related Learning Department. The

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responses were provided anonymously, however the majority of the responses are believed to have been received from Highlands College students. The Forum expects that the questionnaire may have been more relevant to these students given the vocational nature of the college and the likelihood of older students being present, therefore more of these students are likely to have had some experience of working or trying to find a job.

During the period 13 July to 9 September 2009, Questionnaires 1 and 2 were circulated to those on the Forum’s consultation database (approximately 200 in total), which includes a wide cross section of respondents. In addition, a public workshop was held on 8 September 2009 which was attended by 25 people, representing a representative range of relevant stakeholders. The responses verbally given during the workshop have been considered in detail by the Forum during the preparation of this recommendation; however any comments given at the workshop have not been directly attributed to individuals in this report..

The Forum received 24 written responses from a representative range of respondent types and industries, including; Agriculture, Hospitality, Retail, Finance and Utilities. This compares favourably with responses received during the previous minimum wage review. In addition, the Forum received 80 replies to the students’ questionnaire.

	2008	2009
Trade union/staff association	1	1
Employee	2	6
Employer	9	10
Employer association	4	2
Other	2	5
Students	0	80

## Economic Implications - Impact on businesses

In the Forum’s 2006 review, most respondents indicated that the minimum wage increase had a minimal impact on their business. By the 2008 review, respondents appeared to be becoming more concerned about the impact of minimum wage increases than previously.

In this minimum wage review, respondents were asked if there is any particular information or issues that they would ask the Forum to take into account, particularly in regard to whether the minimum wage should be adjusted.

The majority of employers who responded across all industries represented in the consultation stated that they were in favour of either freezing the minimum wage, or applying only a minimal increase from April 2010. Concerns were expressed about the effect on wage differentials, employers passing on additional costs to customers



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and pushing up prices even further, making businesses unsustainable and leading to redundancies. The Jersey Farmers' Union ("JFU") stated that *"with the present uncertainty it would be prudent to leave the minimum wage at its present rate. The current £6.08 level will still provide a safety net against very low wages."*

The Jersey Hospitality Association ("JHA") commented that, *"keeping hospitality businesses competitive in the current economic climate, without increased operational costs e.g. unacceptable increases to the Minimum Wage, would be seen as a welcome support mechanism for our sector."*

A Law firm stated that *"the current economic climate is very unstable and it is not clear at this stage if, and when, the situation will improve. Many business have, or are in the process of, implementing pay freezes and other measures which will have a negative financial impact on the entirety of their workforce."*

The Forum noted that the 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; one Hospitality and tourism employer commented that it is *"unlikely that we would be able to avoid redundancies if there is to be a significant increase in the minimum wage, which would also necessitate increases at other levels to maintain differentials. All other possible actions to reduce wage cost have been exhausted."*

The Forum appreciates the importance of differentials, noting the comments of a Law firm who said that an increase in the minimum wage *"could place employers under considerable pressure from other employees who will not have benefited from a pay rise. An increase in minimum wage could have a knock-on effect on employees and areas of business where people are generally paid above the minimum wage but are not, this year, receiving pay increases."*

Employers were also asked by the Forum whether the downturn in the economy has led to changes in certain aspects of their business, in particular about increases or decreases in their staffing levels, prices, profits, quality of service, employees' terms and conditions of employment in regard to basic working hours, overtime and other benefits, such as bonuses and tips.

Most of the employers who responded reported a slight or significant decrease in profits and prices. In some Hospitality and tourism businesses, employee's basic working hours appear to have been reduced, overtime has been banned, and there is some evidence that end of season bonuses have been discontinued. In some cases, these changes have been driven by reduced custom and demand. The feeling from the Hospitality and tourism industry in general is that a significant increase in the minimum wage could lead to redundancies due to the "wage to revenue" percentage becoming unsustainable.

The Forum notes that such changes in terms and conditions will have impacted already on lower end earners who may be more reliant on bonuses and overtime as

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a significant part of their overall employment package. An anonymous respondent noted the effect of the rise in costs in terms of the effect low paid employees; *“The majority of employers I work with have frozen pay in 2008 /2009 and are not paying cost of living increases unless contractually obliged to do so. This is a double hit on many low income families who are coping with the burden of increased costs and no wage increase to offset them.”*

Unite pointed out that *“Although RPI has decreased the prices of many essentials have been rising at a far higher rate than RPI inflation (Food 4%, Household Goods 4%, Household Services 5%, Fares & other travel 4% and Leisure services 6%)..”*

Looking at the particular details of the food increases detailed in the June 2009 Retail Price Index report, price rises were seen across the majority of the food groups for the year as a whole. For the quarter March to June 2009, the increase in the prices of bread and cereals was reported to have been offset by the lower cost of fresh fruit and vegetables. The Statistics Unit reports that *“this latest annual increase is the lowest increase in the past 2 and a half years and is substantially below that of previous quarters; food prices rose on an annual basis by 13% in both June and September 2008; by 14% in December 2008; and by 9% in March 2009.”*

JACS stated that, *“Bearing in mind that the minimum wage is intended to be an “underpinning” wage rather than what would be regarded in Jersey as a “living” wage, and the much publicised cost of essentials (food, utilities etc), we believe an increase to at least maintain the purchasing power of the minimum wage is essential.”*

The Forum has recognised the concerns of employers and has balanced this against the need for an increase in wages (particularly for local employees) in view of significant rises in the costs of food and other services.

### **Statistical and Economic information obtained during consultation**

The Economic Advisor updated the Forum on economic conditions in May 2009, commenting that, *“with the global economy facing the worst outlook for 60 years, the Jersey economy is likely to experience a significant downturn over the next 18 months. This requires continued caution in recommending minimum wage increases, however the concern is no longer about inflation, but relates to protecting jobs and keeping businesses competitive both in the local and international market place.*

*The global economic crisis has been driven by a banking related financial crisis; however jobs are at risk in Jersey in both the finance and non-finance industries. In response, the States has agreed a significant package to stimulate the economy on the recommendation of the Treasury and Resources Minister with the intention to support employment and businesses in the Island, through policies that are targeted, temporary and timely.”*



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The 2009 Index of Average Earnings measures changes in average earnings received between the last weeks of June 2008 and June 2009<sup>3</sup>. Unlike the Retail Price index, the average earnings index is not influenced directly by the Bank of England base rate. The latest increase in average earnings is the lowest since 1995 and is 1.3 percent lower than in the previous twelve month period.

The average earnings increase was greatest in the Agriculture industry - a 5.9 percent increase - compared to an increase of 3.5 percent in the Finance sector. The Statistics Unit report attributes this increase predominantly to the 4.3 percent minimum wage increase in April 2009, however given that the Hospitality and tourism industry is also a minimum wage paying employer, the Forum was interested to note that "Hotels, restaurants and bars" showed only a 2.3 percent increase in average earnings during the same period.

The Statistics Unit's 2008 report on the Gross Value Added (GVA) and Gross National Income (GNI)<sup>4</sup> shows that the Island's economy continued to grow in real terms by 2 percent in 2008, however this was a lower rate of growth than had been seen in each of the previous two years.

The Jersey Retail Prices Index (RPI) has decreased by -0.4 percent in the year to June 2009. The Forum considers that RPI(X) is a more appropriate index on which to base minimum wage decisions given that this index excludes the cost of house purchase and is therefore more relevant to minimum wage earners who are unlikely to own their own property. The Jersey Advisory and Conciliation Service ("JACS") believes that, bearing in mind the purpose of the minimum wage, it must at least keep pace with the RPI(X) figure, which is 2.8 percent.

Unite the Union asked the Forum to consider that, *"Since the introduction of a minimum wage in Jersey in 2005 employment levels have remained stable with 53,280 in June 2005 and the latest figure available being 53,540 for December 2008. Within this private and public sector employment has remained steady also."*

More recent figures released by the States Statistics Unit reveal that total employment at June 2009 has since decreased for the first time in five years; the net decrease in the private sector was 380. Decreases were seen in Wholesale and retail (-210) and in Hotels, restaurants and bars (around -200).

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<sup>3</sup> In the previous minimum wage review, JACS was concerned that by applying AEI, the minimum wage is set in reference to data that may not be relevant to those industries in which the minimum wage is typically paid. The Statistics Unit has reported that for the year to June 2009, the average overtime payment across private sector employment was £20 per week. In, 2010, matched pairs may be available for this data which may give a clearer indication of the influence of overtime on the index.

<sup>4</sup> [www.gov.je/NR/rdonlyres/8D99C151-F123-4419-B34C-34D97F0BDA10/0/GVAandGNI2008.pdf](http://www.gov.je/NR/rdonlyres/8D99C151-F123-4419-B34C-34D97F0BDA10/0/GVAandGNI2008.pdf)

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## SECTION 4 – RECOMMENDATIONS

The current minimum wage is £6.08 per hour which (based on a 40 hour week) gives average earnings of £243.20 per week. This is 40.5% of the average weekly wage of £600 (as reported at June 2008). The Forum has considered the rates resulting from the following methods of increasing the minimum wage based on the indices and comparators available to it;

	Minimum wage per hour
Retail Price Index -0.4%	£6.06
Retail Price Index (X) 2.8%	£6.25
Retail Price Index (Y) <sup>5</sup> 2.9%	£6.26
Average Earnings Index 3%	£6.26
Mid point between RPI & AEI 1.3%	£6.16
40% of weekly average earnings (£620)	£6.20
40.5% of weekly average earnings (£620)	£6.28
41% of weekly average earnings (£620)	£6.36
UK % increase (1.2%)	£6.15
Isle of Man % increase (0%)	£6.08

The Forum notes that the UK has applied a 1.2 percent increase to the National Minimum Wage from 1 October 2009. Average earnings in the UK increased by 2.1 percent for the year June 2008 to June 2009 (an increase of 1.6 percent in the private sector and 3.7 percent in the public sector).

The UK's Retail Price Index for the same period decreased by -1.6 percent, with RPI(X) and RPI(Y) increasing by 1 percent and 1.9 percent respectively. In the same period, Jersey's Retail Price Index decreased by -0.4% whilst RPI(X) and RPI(Y) increased by 2.8 percent and 2.9 percent respectively.

In most countries, minimum wages are around 40 percent of median earnings (see Appendix 1). The Forum is of the view that no matter what percentage increase is applied to the minimum wage, to protect Jersey's international reputation, the weekly rate should not fall below 40 percent of Jersey's average weekly wage.

In its 2008 minimum wage review, the Forum noted that there had been continued growth in the economy, including in the Agriculture and Hospitality industries and considered that the move to 40.5 percent of the weekly average earnings was appropriate at that time; however the Forum recognised that the minimum wage rate and the uprating formula should be reviewed again in 2009 when there may be a clearer indication of any impact of economic decline.

The Forum considers that it is now clearer that there will not be a rapid recovery from economic decline in 2010; growth has been slower than in previous years, total

<sup>5</sup> RPI(Y) excludes the cost of house purchase and the effect of indirect taxes such as GST.

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employment in the Island has decreased, there is a real concern about further redundancies and there has been a significant increase in appeals from employers and employer associations to freeze the minimum wage. For these reasons, the Forum considers that it would be reckless to push earnings beyond 40 percent of weekly average earnings for this year. A further review will be required in 2010.

The Forum believes that unless an increase is applied with great caution on this occasion, the Forum would risk damaging jobs in Retail, Hospitality, Agriculture, and possibly other industries.

The Forum therefore recommends a 2 percent increase, giving a minimum wage of £6.20. The Forum is aware that this is less than the increase in RPI(X), however considers that this caution is essential to protect jobs at this time. In the Forum's view, the greatest concern in this year's review is to avoid triggering redundancies.

**The Forum recommends a 2 percent increase to the minimum wage which will give a new rate £6.20 to apply from 1 April 2010.**

### **TIMING**

In previous years, the Forum has ensured that recommended new minimum wage rates are announced in September or October, to come into force the following April in view of the Agriculture and Hospitality industries need to set prices and tariffs in advance. In view of the current economic climate, the Forum asked whether it may be in the best interest of businesses if, on this occasion, the recommendation was delayed. This would mean that employers would have less notice of the new rate, however additional statistical information and a clearer understanding of Jersey's economic prospects for 2010 might be available to the Forum.

Four employers, including one Utilities employer, one in Agriculture and two in Retail, suggested delaying the recommendation until January 2010 with the revised minimum wage rate (if any) coming into force on 1 April 2010, as usual. The Forum considers that the timing of the recommendation is less likely to have an impact on Retail and Utilities employers in terms of prices and tariffs.

JACS commented that *"Our understanding is that the need of agriculture and hospitality for advance notice at least 6 months before the increase date is still applicable."*

The Forum however noted that one of the Agricultural employers was not concerned about the release of the recommendation being delayed, commenting that *"agriculture does not generally "set its prices" but receives what the market place can yield. If more robust data can be achieved by delaying 3 months, it may be prudent to hold off a decision."*

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One Retail employer commented that *“although the delay would give less time to implement any changes, it would allow more time for the effects of the current economic downturn to be reflected in the financial statistic, thus allowing a more informed judgement to be made.”* Another Retail employer commented that the *“delay may well help protect jobs. Profits are falling, therefore increasing employment costs may drive job cuts.”*

The Forum’s priority at this time is to protect jobs however, the Forum considers that it is unlikely that sufficient statistical and economic information will be available by January 2010 to give any greater certainty on the prospects for economic recovery. Since the minimum wage consultation paper was released earlier this year, it has become clearer that the market is deflated and that Jersey is unlikely to achieve rapid recovery. As noted by the JFU. *“It is unlikely that even if some signs of recovery are seen in the few months, that those signs would be a guarantee that the economy is recovering long-term.”*

Fourteen respondents said that the minimum wage should continue to be recommended in October 2009 for with any revised rates to be effective from April 2010. All of the Hospitality and tourism employers and the JHA commented that notice is required for consistency and financial planning purposes. Seymour Hotels said that *“the minimum wage rates are needed, as recognised when October was first decided upon, in order to set our tariffs for 2010.”*

On behalf of the industry, the JHA explained that *“Hospitality businesses, in particular those in the accommodation sector, set their room tariffs in the summer for the following year and also prepare their business plans and financial forecasts at the same time. Thus minimum wage rates are required to support this process. They also need to know what their tariffs will be in order to sign tour operator agreements to be featured in brochures during the following year. We support the minimum wage review being completed annually at the same time each year i.e. October and see no reason to change this current timetabling to make it effective from April the year after.”*

These comments were also supported by other non-employer respondents including a Law firm who referred to views that had been expressed at the Minimum Wage workshop; *“particularly given the current economic climate, it is incredibly important that businesses must be able to budget and plan strategically for the coming year(s). Accordingly, the earlier they can have details of proposals about any changes to the Minimum Wage the better. In this context, the view was that the recommendation and revised rates should follow the normal timetable.”*

Unite *“does not believe that a delay in recommendation or rate effective dates would be necessary or indeed helpful to workers or employers. Unite sees no economic reason for the current dates to be changed and belief that the same dates bring clarity for workers and employers.”*

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The Forum sees no reason to amend what has become an established date for recommending the minimum wage and recognises that the recommendation must be released in October 2009, as usual, in order to advise employers (particularly in the Hospitality and tourism industry) of any new rates that would be effective from April 2010.

### **OFFSETS**

#### **Method of increasing**

The maximum amounts that may be offset against the minimum wage where employees are provided with food and accommodation (or accommodation alone) have previously been increased each year in line with the increase in the minimum wage. Respondents were asked whether the maximum offsets should be changed in line with the percentage change in the minimum wage, frozen at current rates, or some other response.

Fourteen respondents said that the increase in the offsets should be the same as any percentage change in the minimum wage. Two respondents said that the rates should be frozen.

JACS suggested that it might be appropriate to freeze the offsets on the grounds that there might be a very small percentage increase in the minimum wage this year. *“Bearing in mind the anticipated low increase to the minimum wage for 2010 (a 2.5% increase would only mean an extra £6.08 for a 40 hour week), it may be appropriate to freeze the offsets for one year only or to increase the offsets by an amount less than the increase applied to minimum wage.”*

Unite believes that the current offsets for accommodation *“should be more than sufficient. Unite believes that offset arrangements should provide protection to the worker and give some recognition of the value of the benefit but are not intended to reflect the actual costs of provision to the employer or the commercial market value.”*

The JHA responded that the change should be the same as that applied to the minimum wage, however commented on the increasing costs of food, accommodation and fuel. The JHA asks the Forum to consider the impact these rising costs have 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 businesses, however offsets must be increased in order to balance the real costs of providing these services and benefits.”*

The Forum is of the view that external factors regarding prices are affecting everyone who has to pay for services and accommodation in Jersey, not just



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employers who are providing these benefits to employees. The Forum also notes that from 1 January 2010, electricity prices will decrease by an average of 5.1 percent. According to The Jersey Electricity Company, the forthcoming price drop should reduce bills for the average domestic property by around £45 a year.

The consultation respondents were clearly in favour of increasing the offsets by the same percentage as the minimum wage increase, and there was nothing in the responses to suggest that the Forum should deviate from the usual method of increasing the offsets. A different percentage increase would have a significant impact on the overall pay package and would therefore require significant justification through the responses.

The Forum recommends that the offsets should be increased proportionately to the minimum wage rate (a 2 percent increase) bearing in mind, as always, that if increased by a lower proportion, or frozen, the effect of any increase in the minimum wage could be unpredictable and would be likely to have a greater impact on employers, particularly in the Agriculture and Hospitality industries.

**The Forum recommends a maximum accommodation offset of £67.85 per week, and a maximum food and accommodation offset of £90.46 per week.**

### **Food offset**

The Forum noted JACS concerns in the 2006 minimum wage review that some agricultural employers were charging two thirds of the food offset due to difficulties in providing a midday meal, and that other employers wanted to charge only the food element of the offset (e.g. cafes) where accommodation is not provided. The effect of the Minimum Wage Regulations was clarified via the JACS guide to the Minimum Wage in that *"Food" is defined as 3 adequate meals on each day on which the employee is employed. Employers may not off set a proportionate amount of pay for less than 3 meals per day and a charge for food may not be off set unless accommodation is also provided.*"

In this review, respondents were asked whether employers should have the option to offset food against the minimum wage where it is not provided with accommodation, noting that the food component of the existing food and accommodation offset is currently worth £22.17 per week. Respondents were also asked if provision should be made for a rate "per meal", so that employers may offset an amount where they have provided one or two meals to an employee each day (*which would give £1.05 "per meal" at current offset rates*).

Seven respondents supported the introduction of an offset for food where it is provided to employees without accommodation, and eight respondents supported the introduction of a "per meal" offset.



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Two agriculture respondents agreed that the law should be as flexible as possible. One Agricultural employer stated that employees want the offset “per meal” to be permissible: *“Our employees do not want a Jersey packed lunch (however “adequate”) – they have indicated this strongly. There are practical difficulties in providing 3 meals per day to agricultural workers who are working away from their place of residence.”*

An anonymous respondent said that *“Food is a valuable benefit to many working in the hospitality sector but not all employees live in or take 3 full meals each day. Businesses that provide for meals when on duty are being disadvantaged by not being allowed to offset.”*

JACS commented that food should only be offset where it is provided with accommodation and that *“the food rate should be on a “per meal” basis, rather than 3 meals per day only as this provides both employer and employee with more flexibility, particularly the agricultural industry where it is difficult to return to accommodation for the midday meal.”*

An individual employee also supported a “per meal” offset to cover situations where it is not possible to provide three meals per day, however in respect of a “food only” offset, commented that *“there is no reason to change current practice in this respect; the provisions of meals without accommodation has long been generally regarded as an employment “perk”, which also often assists the employer in that staff do not have to take extra time for meals eaten elsewhere during a working day.”*

JACS also did not however support a food only offset commenting similarly that, *“There is no need for employers to provide staff who do not “live-in” with one or two meals a day unless there is an advantage to employers in so doing. It is possible that such employers do so as it is convenient to the employer for staff to have their meal on site, whenever convenient e.g. between busy periods, rather than for staff to leave the premises in order to eat.*

JACS also noted that queries about rest breaks during the working day are one of the most common queries received by JACS; *“We are of the view that if regulations allow a charge for meals to be offset, then regulations should also provide for a realistic break from work so that employees can eat their meals without interruption (in fact, we believe that present legislation is lacking in that there is no provision for statutory breaks in what can be a long working day for some employees.”*

The Forum noted that further consultation on leave and rest day entitlements is likely to be requested by the Social Security Minister in 2010-2011 in order to build on the basic provisions set out in the Employment Law and considers that a break during the working day should be considered and consulted upon at this time.

Responses varied amongst employers in the Hospitality and tourism industry. One Hotelier and the JHA agreed with introducing offsets for meals only and individual

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meals, however two other Hoteliers did not agree with either of the proposed changes to the offsets; one commenting that *"it is common practice to provide meals on duty within the hospitality industry, and is not something which we would consider making a charge for or offsetting against the minimum wage."*

The Forum considers that if restaurants, pubs and bars are to be able to benefit from the offsets, a "food only" offset would be required. A number of the respondents recognised this as the target group, however no response (other than from the JHA as an overall industry representative) was received from these types of employers.

Unfortunately the Forum did not receive sufficient responses from those who would be directly affected by greater flexibility in the food offsets. Responses to the "employee" questionnaire were received from only five respondents, all of whom work in the Hospitality and tourism industry and receive the minimum wage. Of these five employees, three said that they would not take up an employers offer of meals at a cost, with or without accommodation, and irrespective of the number of meals per day). Two of these three employees are already being charged by their employer for three meals per day. Due to the small number of responses involved, the Forum appreciates that this does not provide a sound basis for a decision.

Two respondents, including a Hospitality and tourism employer and a Law firm suggested that these additional offsets might be acceptable if the employee was able to opt in or out. The Law firm commented that *"an employee should not be forced to agree to it. Further, if an employee agrees to the deduction and then changes their mind they should be able to change their position at a reasonable point. (They might have agreed to it at the outset only to discover that the food was of an unacceptable standard.) This might make such a measure unrealistically time-consuming to apply in practice."*

The Forum agrees that an "opt in/out" method would not be practical in terms of administration for the employer or the employee, and doubts that this procedure could be effectively enforced in terms of determining whether an employee has opted in or out of any particular meal. The Forum considers that the suggested flexibility in the offsets would involve additional administration in order to keep sufficient payroll records to determine how many meals an employee has taken per day, and therefore how much they will be paid. Although this is an issue for the employer to resolve if they chose to offset meals, there is great potential for dispute and abuse, and the provision of meals would be almost impossible to control and regulate.

**The Forum recommends that the offset should remain as it is currently, in that employers will only be permitted to offset charges for food against the minimum wage where three meals per day are provided, with accommodation.**

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## Goods and Services Tax

In the Forum's 2008 minimum wage review, some employers' had expressed concerns about bearing the additional cost of the Goods and Services Tax ("GST") that is charged on meals provided to employees. The Forum asked respondents whether provision should be made so that where an employer is required by the terms of an employment contract to provide meals to an employee with accommodation (board and lodgings), any charge made to that employee for the meals is not subject to GST. An Income Tax Direction<sup>6</sup> already exempts from GST accommodation where it is provided under a contract of employment, but does not differentiate where accommodation is provided as part of a board and lodgings package.

Eight respondents felt that GST should not be charged on food that is provided to employees under the minimum wage offsets. Five respondents, including two Law firms, the JHA, a Utilities employer and Unite did not agree that provision should be made to exempt GST from food provided to employees under a contract.

One Law firm commented that it might be *"difficult to start having exceptions to GST for discrete provisions like this - couldn't it give rise to major difficulties with the application of GST for the States? Why would you have a GST exemption in this case and not generally on food?"*

Unite believes that *"the employer should pay the 3% GST and that this shouldn't be offset or passed on to the employee by any other means. It is a tax requirement which other employers are required to pay and should be the same for employers who pay the minimum wage."*

**The Forum will notify the Treasury and Resources Department of the results of this aspect of the consultation and will ask the Department to consider whether it would be appropriate to amend GST Direction 2008/01 to include an exemption from GST on food where it is provided as part of board and lodgings to an employee under a contract of employment.**

## Utility bills and other benefits in kind

Currently, only two benefits in kind may be off set against the minimum wage. The JACS guide to the Minimum Wage states that; *"No other form of benefit (e.g. utilities bills) can be taken into account in determining whether the Minimum Wage has been satisfied."*

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<sup>6</sup>[www.govt.nz/nr/rdonlyres/E4AA453E-2E55-4A2A-B3C0-D6550BF3CA74/0/Direction200801AccommodationsuppliedunderacontractofemploymentMarch2008.pdf](http://www.govt.nz/nr/rdonlyres/E4AA453E-2E55-4A2A-B3C0-D6550BF3CA74/0/Direction200801AccommodationsuppliedunderacontractofemploymentMarch2008.pdf)

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In the previous minimum wage review, the Agriculture industry asked the Forum to consider introducing greater flexibility in the offsets, in particular to allow charges to be offset against the minimum wage for utilities bills and laundry services.

The Forum has previously expressed concern about overcomplicating the offsets, particularly by introducing other benefits in kind, and opening the offset up to abuse. Permitted deductions from the minimum wage are clearly defined in the Regulations and are purposely limited to remove the danger of exploitation of minimum wage employees, as well as the right of the employee to decide how to spend their own wages. This does however mean that some well-meaning arrangements cannot be permitted in order to prevent the less well-meaning employers from abusing such benefits in kind.

The Forum has consulted further on other benefits in kind to take into account the experience of other industries, particularly Hospitality and tourism, and considers from the responses received that this is an issue with limited impact and is likely to be relevant to only to a small number of employers.

Three respondents agreed that the Minimum Wage Regulations should be changed so that employers may offset against the minimum wage other benefits in kind, services and utilities that are provided to employees. The JFU stated that employers should be able to offset *“Any services (electricity, gas, water etc.) that are provided by utility companies. These charges should only be charged at cost.”*

An Agricultural employer agreed that there should be a charge for electricity and heating at £1 per day, for example, and *“laundry services, provided they are supplied at cost, should be chargeable e.g. £6/7 per basket,”* commenting that *“providing ‘all in’ accommodation at £88.69 / week puts the (responsible) employer at a huge financial loss.”*

The Forum is of the view that it would not be appropriate to introduce an offset into the legislation that allows employers to charge for these services at “cost” as this would be impossible to monitor or regulate given that the costs of such services (e.g. electricity rates) would vary depending on the particular employee, between different accommodation units and in different seasons.

Twelve of the respondents were opposed to introducing additional benefits in kind that may be offset against the minimum wage. The JHA stated that *“Permitted deductions from the minimum wage are clearly defined in the Regulations and are purposely limited to limit the danger of exploitation of low paid employees...charges for gas, electricity, laundry and furniture should be treated as part of the accommodation package.”*

An employer in the Hospitality and tourism industry stated that they would not offset additional benefits against the minimum wage and commented that *“Any system needs to be easy to administer and uncomplicated.”*

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JACS is of the view that *“Allowing further offsets would over complicate the calculation. For example, what comprises a uniform or how extensive are laundry services? Further offset would also be open to abuse.”*

Commenting from a UK perspective, Unite *“has had considerable experience of abuse of the accommodation offset and other excessive deductions from pay, in particular excessive deductions from wages for agency and migrant workers.”*

The limited number of responses received from employees provided no conclusive evidence that the employees wanted these additional services; four of the five stating that they would not take up an employers’ offer of laundry services and utility bills at a cost. However, due to the small number of responses involved, the Forum appreciates that this does not provide a sound basis for a decision.

Given the lack of evidence in the consultation responses from employers and employees that it would be beneficial for these additional services to be chargeable against the minimum wage, and the concerns regarding potential abuse, the Forum does not consider that a significant case has been made to amend the Regulations.

**The Forum recommends that that the offsets should remain as they are currently, in that employers will only be permitted to offset against the minimum wage a maximum amount for accommodation, and accommodation with food.**

### **Tips**

Jersey’s Minimum Wage Regulations state that in determining whether the minimum wage has been paid, all amounts paid by the employer to the employee representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge that is not paid through the payroll, must not be taken into account. Until 1 October 2009, the situation was the same in the UK, whereby tips paid through the payroll could be used by an employer to “top up” minimum wage pay and did not have to be paid to the employee on top of the minimum wage.

The UK Government has amended its legislation so that tips, service charges, gratuities and cover charges can no longer be used to make up National Minimum Wage pay. This means that eligible workers will receive at least the National Minimum Wage per hour, with any tips being paid on top.

The Forum’s consultation asked about tipping practices locally and asked respondents whether Jersey should follow the UK. The responses produced little evidence as to whether the practice of using tips to top up pay is common in any particular industries in Jersey. None of the employers who responded reported doing so, which means that the Forum is not able to assess from the responses received whether an amendment to the legislation would have a financial impact on local businesses.



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Unite *“believes that this is a predominantly a problem for the hospitality industry in Jersey, like it is in the UK.”*

JACS noted that *“Anecdotal evidence does not suggest such practices are common, but they do certainly occur. What is more common are allegations by some staff, particularly those employed in cafés and restaurants, that tips and gratuities are not apportioned fairly by their supervisor or manager.”*

Of the limited number of employee responses received, all five employees (who work in the Hospitality and tourism industry) said that they either pool and share, or keep their own cash tips. Two of the employees however were unsure what happens to non-cash tips, such as inclusive service charges and tips paid via a credit card transaction.

The JHA referred to recent developments in the UK; *“On 20 July, 2009 our colleagues at the British Hospitality Association published a voluntary code of practice on service charges and are urging restaurants, including hotel restaurants, to disclose to customers exactly how they deal with discretionary service charge and non-cash tips. Following the review of the minimum wage, the JHA would be happy to encourage our members to implement the Code as soon as practical.”*

The JHA also noted that *“most businesses distribute cash tips and those collected via credit cards via an in-house Tronc Masters. It is usual for businesses to have no direct involvement with the actual distribution of tips to individual staff members.”* Two employers in that industry supported that statement, one commenting that tips are *“distributed on a monthly basis and do not form any part of our obligations as an employer to meet the minimum wage.”*

There were six responses to the question of whether the practice of using tips, service charges and gratuities to top up minimum wage pay should stop, all from non-employers and all supporting the prevention of this practice.

A Law firm and an individual employee made a distinction between mandatory service charges and other discretionarily tips, service changes and gratuities, the Law firm commenting; *“there may be such charges added in relation to large groups, for example? Such tables may be more time consuming/difficult to deal with than smaller tables and there may be a reason why such charges are added and should go to the employer?”* The Forum considers that both mandatory and discretionary amounts must be excluded; otherwise employers could simply apply additional mandatory charges to customers’ bills to enable them to continue the practice of using these amounts to top up minimum wage pay.

Given that there were no responses from businesses where tipping is common, (such as hairdressers, taxi firms, restaurants and bars) and that there were few informed comments from the consultation respondents about tipping practices in the Island, the Forum is concerned that if employers in these industries were suddenly prevented from topping up pay with tips, service charges and cover charges,



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without sufficient notice, any difficulties experienced would be compounded by the current economic downturn.

The Forum supports the principle of ensuring that employees receive the full minimum wage, however had hoped to receive more information regarding the payment, collection and distribution of tips and gratuities. The Forum's priority is to avoid job losses. If employers are relying on tips to top up minimum wage pay, a suitable period of notice will give employees time to prepare their businesses in whatever way necessary.

**The Forum recommends that the legislation should be amended, as in the UK, to prevent employers from using tips to top up minimum wage pay.**

**The Forum recommends that this change should be effective from 1 April 2011, giving employer's a year's notice to change any existing practices.**

### **Youth and Student rates**

In its 2006 recommendation, the Forum had recommended that a lower minimum wage rate should be available for students aged 16 to 18 who are in full time education. The Forum had proposed that a student rate would enable it to consider recommending that the minimum wage should be increased by more than average earnings in the future, as a student rate would assist in avoiding the possible negative consequences on labour market opportunities for young people.

The proposal was rejected by the States and was therefore not implemented. It was considered that the rate would introduce unnecessary complexity and would be open to abuse; that it is discriminatory and exploitative to pay one 16 year old a lower rate where he is doing the same job in the school holidays as another 16 year old who is working full time; and that there is no evidence that the supply of jobs for students has become more limited.

Despite concerns around age discrimination, the UK and other jurisdictions continue to justify different rates for different age groups on the grounds of evidence that a lower rate is necessary to protect their position in the labour market. In order to justify recommending a lower rate for young people or students, the Forum would require evidence that young people are suffering from a loss of work experience and job opportunities.

Of the ten employers who responded to the consultation, seven reported that they do employ some young people, depending on the season, almost all of whom are aged 16 to 18 and still in full time education. Of those employers, four reported that they have either employed fewer young people, or have been discouraged from employing young people, since the introduction of the minimum wage (one in Retail and three Hospitality and tourism employers).

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One Retail employer and two Hospitality and tourism employers said that they would employ more young people and that their business would benefit from a youth or student rate. One employer commented that *“16-17 year olds have less flexibility than other staff and there are restrictions on tasks they can carry out and where they can work, for example behind bars, in kitchens, in pool plant rooms (lifeguards) etc. It is only fair that they should be paid less than a full time, fully skilled and flexible employee.”* Another commented that young people *“need more supervision, more training and have to learn or come to understand the work ethic.”*

There was support for either a youth rate, or a youth rate and a student rate, from seven respondents, including the JHA and the JFU, two Hospitality and tourism employers, and a Law firm. The Forum was interested to note that JACS supported a youth rate despite previously opposing a youth rate on the grounds that there is no reason to pay an employee less for doing the same job simply because they are 16 or 17 years of age.

JACS view is that the minimum wage has had a detrimental effect on young people or students in terms of the availability of part time jobs; *“Anecdotal evidence of a reduction in opportunities in general office duties in particular, but also in tourism related attractions and retail – not an issue before the economic downturn but appears to be an issue at the present time.”*

JACS now notes from their experience that *“employers are often reluctant to employ 16 or 17 year olds due to the need for additional supervision, restrictions on activities such as selling alcohol or tobacco products etc as outlined in the consultation paper... those who are still students appear to have struggled to find vacation work that provides valuable work experience over the last couple of years. It is believed that the application of a youth/student rate would assist in the generation of employment opportunities for these groups.”*

Four respondents, including Unite, an individual employee, a utilities employer and a Law firm, said that there should be neither a youth rate nor a student rate. Unite noted that in those areas where Unite is organised, they have *“abolished youth rates by negotiation there is no evidence that this has led to a decrease in young people employed. This is largely because many companies are prepared to abolish youth rates in recognition that doing so aids recruitment, retention, motivation and productivity.”*

Unemployment figures released by the Social Security Department show that of the 908 people registered with the Department as unemployed and actively seeking work on 31 August 2009, 171 were aged 16 to 18 (see Appendix 2). This represents 18.8 percent of all registered unemployed people.

The Forum is aware of a new Advance to Work (ATW) scheme which has been set up as part of the State’s package of measures to assist the Island through the financial downturn. The scheme is intended to help young people (aged between 16 and 19, who have left school) by providing them with work placements

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and training, so that when the recession ends, they will be in a good position to get a job. More than 100 people have applied to join the scheme and 25 young people are on work experience placements.

The Forum prepared a questionnaire which was specifically designed for students and was circulated to schools in the Island via Careers teachers. Eighty students responded, 71 of whom were aged 16 to 18. Only 14 of those who responded did not have a job and the vast majority (66) were working. The most common jobs were in a supermarket or retail sales (32), in a restaurant (12) and in hairdressing (9). The Forum notes that it is possible that working students were more likely to complete the questionnaire than other students who were not working because they perceived the questionnaire as being more relevant to them.

The Forum notes the relatively small number of students working in the Hospitality industry compared to Retail, however it is not clear whether this is due to lack of desire amongst young people to work in that industry, or lack of opportunities presented by that industry.

Thirty of the students who responded said that they had not been able to get a job at some time when they had wanted one (only six of whom are not currently working). Only 10 of these students felt that the minimum wage had been a factor in not being able to find, or losing, work.

Some of the comments included that employers would rather employ adults *“as they are stronger and could probably work harder and for longer,”* and *“it’s better to get someone who can work more hours.”* One student commented that *“It’s cheaper for employers to hire someone that they don’t have to pay minimum wage for, so if they had a choice between over or under 16 or they would go under 16”*. This comment suggests that some employers may opt to employ 15 year olds to avoid paying the minimum wage at all.

Students were also asked, if there were to be student or youth rate, whether it should be the same hourly rate of pay as the trainee rate. An overwhelming 54 students said that it should be higher than the trainee rate.

Some of the comments included that *“£4.56 is very low compared to now and is a big drop from £6.08;”* and *“If the minimum wage for students or youths was lower than £6 it would discourage a lot of people from looking for a job”*.

The Forum was surprised by the high level of employment amongst the students who responded and the lack of evidence that students are finding it difficult to find work. Where finding a job has been a problem, the responses give little evidence that the minimum wage is perceived to have been a factor in this. The over-riding impression from the comments received is that, if there were to be a youth or student rate, the students feel very strongly that the current level of the trainee rate is not sufficient.

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The Forum considers that the consultation has not revealed sufficient evidence that employers have a strong need for the rate and that the availability of a lower rate would impact on employers' behaviour sufficiently. Where employers do not employ young people, there are likely to be reasons other than the minimum wage; including one Agriculture employer who said that ethical trading protocols deter employers from employing minors in this sector, and one Hotelier who said that a policy decision had been taken by the company not to employ people under age 18.

With the supportive "advance to work" scheme underway and little evidence from the consultation that students are suffering from lack of part time work opportunities, the Forum is concerned that the introduction of a youth or student rate could have a detrimental effect on young people who already have a holiday or weekend job if their employer reduced hourly pay to the new lower rate, particularly students and young people who are supporting themselves, such as mature students.

**The Forum recommends that neither a student rate nor a youth rate should be introduced.**

### **Trainee rate**

The consultation did not specifically ask questions about the trainee rate and no comments were offered by respondents in regard to whether or not the trainee rate should be increased. There is therefore no reason to recommend that the trainee rate should be calculated any differently than in previous years, therefore the Forum recommends that the trainee rate should continue to be calculated at 75 percent of the minimum wage rate.

**The Forum recommends a trainee rate of £4.65.**

### **Next minimum wage review**

In 2006, the Forum expressed an intention to review the minimum wage every two years, instead of annually, unless there were circumstances, such as economic changes, to suggest that an earlier review is necessary.

Given the current economic climate, the Forum proposes that it is necessary to continue to review the minimum wage annually at the current time in order to consider any effects of the unstable economy, costs of products and services, the performance of the Agriculture, Hospitality and retail industries in particular.

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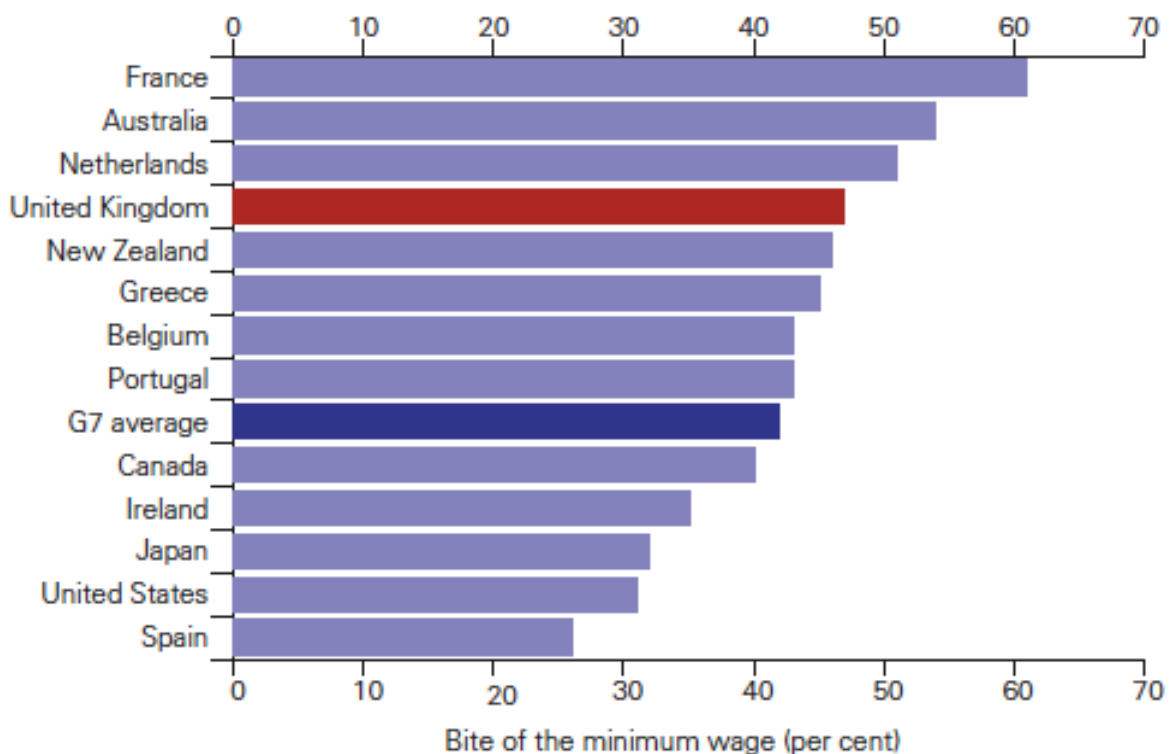


## SUMMARY OF RECOMMENDATIONS FOR 1<sup>st</sup> APRIL 2010

	1 <sup>st</sup> April 2009	1 <sup>st</sup> April 2010
Minimum Wage	£6.08	<b>£6.20</b>
Trainee Rate	£4.56	<b>£4.65</b>
Accommodation offset	£66.52	<b>£67.85</b>
Accommodation & food offset	£88.69	<b>£90.46</b>

### Appendix 1

#### Adult Minimum Wages Relative to Median Earnings, by Country, 2008



Source: Government evidence to the Low Pay Commission on the economic effects of the National Minimum Wage, December 2008. (BERR, 2009f)

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**Appendix 2 Charts showing the number of people registered as actively seeking work, by age, as at 31 August 2009**

