

RECOMMENDATION - MINIMUM WAGE RATES FOR APRIL 2007



Issued by the Employment Forum on 5 January 2007

PURPOSE OF RECOMMENDATION

This recommendation is the result of the Employment Forum's second review of the minimum wage, the main purpose of which is to recommend a minimum wage rate to take effect from 1st April 2007. It also makes recommendations on the offsets for accommodation and food, the trainee rate, youth rate and the method and timing of increases in the minimum wage.

SUMMARY

Section 1 – Background

Section 2 – Minimum wage rates in other jurisdictions

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

Telephone: 01534 447204
Fax : 01534 447446
Email: K.Morel@gov.je

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www.gov.je/ChiefMinister/PublicConsultations

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

Sally Johnson
Melvin Le Feuvre
Tina Palmer
Brendan Renehan
Carol Le Cocq
David Robinson
Jan McCarthy.

The Forum is very grateful to all those who responded this consultation.

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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 (ESSC).

The Employment Forum's first Minimum Wage Recommendation was issued in October 2003. The outcomes of that consultation are discussed in Section 3.

Based on the Forum's recommendations, a Minimum Wage Report was presented to the States by the ESSC on 6th January 2004, which provided information regarding the likely rate of minimum wage.

On 20th July, 2004, the States of Jersey approved the subordinate legislation required to bring the minimum wage into force under the Employment Law. The Employment (Minimum Wage) (Jersey) Regulations 2004 and the Employment (Minimum Wage) (Jersey) Order 2004 came into force on the same date as the Employment Law (1st July 2005) which provided the legislative framework for the minimum wage and formalised the Employment Forum.

The minimum wage was due for review less than 4 months after it had come into force, making a full assessment of any impact on the economy very difficult. The Forum's first "Minimum Wage Review" recommended a 3% increase in all minimum wage rates, which was approved by the ESSC. The Regulations were approved by the States on 14th February 2006, following which the newly appointed Social Security Minister made an Order setting the new minimum wage rates, to apply from 1st April 2006. The outcomes of that review are outlined in Section 3.

Two specific issues of importance were raised during the first review as calling for more detailed consideration; the trainee rate and therapeutic work. The Forum agreed to consider these two aspects in its next review, which are discussed further in Section 4.

SECTION 2 – OTHER JURISDICTIONS

UK

The UK introduced a National Minimum Wage in April 1999 at an initial rate of £3.60. The Low Pay Commission was aware that low paid workers would not be helped if it recommended a rate so high that jobs would be put at risk. So, the

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Commission recommended that the minimum wage should be introduced at a prudent rate offering real benefits to the low paid, while avoiding unnecessary risks to the economy, businesses and jobs.

Since assessing its economic impact, the UK has increased the minimum wage in significant jumps ahead of inflation. However, in a recent press release (20 March 2006), the Low Pay Commission concluded that *“the phase in which the Commission was committed to increases in the minimum wage above average earnings was now complete and, looking forward, the commission will start with no presumption that further increases above average earnings are required.”*

The UK minimum wage is aimed at providing employees with decent minimum standards and fairness in the workplace. It applies to nearly all workers and sets hourly rates below which pay must not be allowed to fall. It is intended to help business by ensuring companies will be able to compete on the basis of quality of the goods and services they provide and not on low prices based predominantly on low rates of pay.

Following a recommendation from the Low Pay Commission, the UK rates were increased on 1st October 2006;

- Adult workers (22 and over) – up 30p to £5.35
- Development rate (18-21 year olds) – up 20p to £4.45
- Development rate (16-17 year olds) – up 30p to £3.30
- Young workers (not apprentices) rate (16 and 17 year olds) – up 30p to £3.30
- Accommodation offset – up £1.75 to £29.05 per week

Isle of Man

The minimum wage rates from 1st October 2006, as recommended by the Minimum Wage Committee (an independent body comprising employer and employee representatives), are:

- Adult workers (18 and over) – up 15p to £5.40 per hour
- 17 year olds and certain trainees – up 15p to £5.05 per hour
- 16 year olds – up 30p to £4.50 per hour

This is against a background of the latest Treasury figures showing an overall annual increase of 0.9% in average pay in the Isle of Man and also inflation for the year to end of May at 3.3%.

Since its introduction in January 2002, the adult minimum wage has increased by 32% compared with inflation of 18%, evidence that it has been successful in raising real earnings for the Isle of Man’s lowest paid workers.

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The latest earnings data analysed by the Isle of Man Treasury shows that around 3% of the Island's workforce of 35,000 earn below £5.40 per hour. It is therefore estimated that about 840 workers stand to benefit from the October increases.

Guernsey

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

SECTION 3 – PREVIOUS CONSULTATION

The Forum's First Minimum Wage Recommendation

Background

The principles behind the minimum wage were to support a competitive economy; be set at a prudent level; be simple and straightforward; and yet make a difference to the low paid. The aim was to provide a package that takes account of business realities but removes the worst cases of exploitation and to provide a minimum standard for wage levels, in the same way that other components of the Employment Law provide minimum standards in the employment relationship, including rest days, annual leave and notice entitlement.

Taking guidance from the views of the Low Pay Commission in the early days of developing the UK minimum wage, the Forum was aware that setting a higher minimum wage rate could make a more substantial difference to the low paid and a greater number of workers, but also that low paid workers wouldn't be helped if the rate recommended was so high that jobs would be put at risk.

Due to the uneven distribution of pay in Jersey, and in an attempt to balance the positives and negatives of the introduction of a minimum wage, the most appropriate minimum wage is lower than it might have been if the disproportionate impact on some sectors had not been taken into account.

It was agreed that in order to provide a decent wage for a fair days work for those who do not receive benefits in kind, especially local residents for whom the offset would not be applicable, a higher basic rate would be more appropriate. These workers on a low wage have to be able to afford to pay for accommodation, bills and food. Also, the higher accommodation rate is more in line with local accommodation prices.

As was the case with the initial rate set in the UK, many jobs were paid around the level of the minimum wage recommended by the Forum, particularly in the Hospitality and Agriculture industries.

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Recommendations for 1st April 2005

- An initial minimum wage rate of £5.08
- A total off set of £74.20, to be split 75% (£55.65) for accommodation and an additional 25% (£18.55) where food is also provided.
- A trainee rate of £3.82, representing 75% of the recommended minimum wage rate.
- Based on a majority decision, the Forum did not give a recommendation on a youth rate.
- The minimum wage should be uprated in future years via an annual recommendation to the Minister following wide ranging consultation, unless there were significant changes in the employment environment that warranted an earlier review.

The Minimum Wage Review

Background

The Minimum Wage came into force on 1st July 2005 instead of the planned implementation date of 1st April 2005. As the minimum wage had been in force for less than four months when the first review was to be undertaken, the Forum distributed a short consultation document during October 2005. Responses were received from a range of respondents and those industries and employers who were most likely to be affected by an increase in the minimum wage were well represented in the responses.

The extremes of view expressed in the consultation responses ranged from 'freezing' the current minimum wage rate, to increasing it to £8 per hour, but most respondents called for an increase.

The Forum agreed that the offsets and trainee rate should be increased in line with any increases in the minimum wage rate in order to retain proportionality; otherwise, the effect of any increase in the minimum wage could be unpredictable and likely to have a greater impact, mainly on the Agriculture and Hospitality industries.

At the time of the review, the Retail Price Index stood at 2%. The Forum agreed that to wait for the March 2006 RPI figure would not give employers adequate notice of a new minimum wage rate. The Forum anticipated that the RPI would rise and then fall between October and April, but would continue to average around 2%.

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Recommendations

The modest increase of 3% was recommended to be applied to all rates, producing;

- A Minimum Wage of £5.24
- A Trainee Rate of £3.94
- An accommodation offset of £57.32
- An accommodation and food offset of £76.43

The Forum also supported its original recommendation; to annually make a minimum wage recommendation to the Minister, following wide ranging consultation. However, in light of comments received during that review regarding the timing of pay increases, contract changes and tariff agreements, the Forum agreed to give further consideration to the timing of the annual uprating and make an additional recommendation to the Minister in its next review. This is considered in more detail in Section 4, along with three other issues that have been raised as requiring more detailed attention; the trainee rate, therapeutic work and the accommodation and food offsets.

Trainee Rate

The Minimum Wage Regulations provide that the trainee rate may be paid to an employee only where the Social Security Minister has approved a course of training as 'accredited'. A code of practice was approved by the Minister in 2005 which sets out the criteria required for a training course to be accredited.

These include; the requirement for a formal qualification at the end of the training that is a locally or nationally recognised and certified qualification; that the training is of a sufficient quality and duration to enable the employee to reach the required standard to complete the course successfully; and that the training is provided at no cost to the employee.

In addition to the trainee rate code of practice, the Minister has recently approved an additional category of trainee, whereby if an employer agrees a structured programme of training at the beginning of employment and maintains a regular logging and reviewing procedure of that training (having first consulted the Enterprise and Business Development team at the Economic Development Department), the training is deemed to be accredited and the trainee rate may be paid. The intention is to allow the trainee rate to be paid where formal accredited training is not available, such as in a specialised trade, and to encourage in-house training where that is the only, or most suitable, option.

Therapeutic Work

'Therapeutic work' is not a legal term. It is used to describe a number of arrangements whereby people who have difficulty functioning in the normal labour

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market are given the opportunity to undertake some form of work-like activity, for which they may receive payment, often whilst in receipt of benefits. Clients working in local schemes are often given a 'contract', are paid a 'wage' and are expected to attend for certain hours per week, which gives the impression of 'employment'.

Every therapeutic work arrangement is likely to be very different and must be considered on an individual basis. Therapeutic work is potentially problematic for the following reasons;

- There is no reference in the minimum wage legislation to a worker's productivity, ability or effectiveness.
- The legislation also makes no distinction between disabled and non-disabled people and contains no reference to 'therapeutic work'.
- The basic criterion for determining whether anyone is entitled to the minimum wage and the protection of the Employment Law is simply - is he an employee?

If a person with any kind of disability or mental health problem is involved in work-like activity under an arrangement that is an explicit or implied employee's contract, then they must be paid the minimum wage and are entitled to the other protections of the Employment Law. The issues surrounding therapeutic work can be complex; however the code of practice appears to have assisted employers and therapeutic work scheme providers to determine whether a therapeutic worker is a 'client' (who is exempt from the minimum wage provisions) or an 'employee' (who is entitled to the minimum wage or trainee rate).

The code of practice provides four additional criteria that may be taken into account by an Employment Tribunal, which provides more certainty as to client/employee status. The intention of the criteria is to balance concerns for the protection of vulnerable workers, against the intention of the schemes designed to help in the provision of training, reintegration, work skills and experience. Employers and therapeutic scheme organisers can use the code of practice to arrange their work practices and the code may be referred to a Tribunal as a test of employment status.

All four of the following criteria must be met for work related activity **not** to be considered as 'employment';

1. The activity is demonstrably focused on needs of the individual rather than needs of the organisation (however it is permissible to derive some benefit from the activity, such as selling any output to offset costs). The activity should be intended and designed to serve the needs of the individual rather than the organisation.
2. The tempo of the activity, and of any output or delivery target, reflects the needs of the individual rather than those of the organisation.

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3. The individual is referred to the activity and monitored/supported by a health or social care professional, (e.g. a GP, social worker, occupational therapist, charity worker).
4. The arrangement is agreed with the individual and not made over his or her head.

It was anticipated that, due to the perceived risks for employers and the cost of paying the minimum wage, the Employment Law might create a negative effect on opportunities for therapeutic workers, such as a reduction in employers' willingness to take on therapeutic workers and a decline in the number of placements available. Since the Law has been in force, only a handful of queries have been received about therapeutic workers, most of which have related to the relationship between benefit entitlements and the right to receive the minimum wage.

Accommodation and food offsets

The Minimum Wage Review did not raise specific concerns about the accommodation and food offsets; however the ESSC had originally intended that employers should only be able to offset an amount for staff accommodation against the minimum wage, as in the UK.

During the preparation of its first recommendation in 2004, the Forum realised that the Agriculture industry provides accommodation to most of its staff (almost 100%) and provides food only occasionally; however the Hospitality industry typically provides food to the majority of employees as part of their accommodation package.

There were initially some concerns that an offset for food might be open to abuse in terms of the quality of food offered. There was also a suggestion that employers in other industries might begin to provide food, or that agricultural employers might increase the number of staff who are provided with food, in order to offset the full amount against employee's pay.

It was recognised that it might be difficult to define what constitutes adequate food, which could lead to problems in regulating and enforcing the provision of food. However, in Ireland, three meals per day may be offset against the minimum wage and the Forum is not aware of any difficulties with this aspect of the legislation.

The ESSC approved the Forum's recommendation for a food offset, with the proviso that the Forum review and report back specifically on this issue in a future review.

Full details of the Forums two previous recommendations on the Minimum Wage are available on the website or can be obtained from the Forum Secretary.

www.gov.je/SocialSecurity/Employment/Employment+Services/Employment+Relations/The+Employment+Forum.htm

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SECTION 4 – RECOMMENDATIONS

Responses

23 responses were received from a good range of respondent types and industries, including; agriculture, hospitality, construction, engineering, retail, marketing, distribution, manufacturing, finance and civil service.

Trade union/staff association	4
Employee	3
Medium and large employers (defined as having 6 or more employees)	8
Trade representative body/Employer association	3
Other	5

TIMING AND METHOD OF UPDATING

In its 2004 recommendation on the minimum wage, the Forum recommended that the minimum wage should be updated in future years via an annual recommendation to the Minister following wide ranging consultation, unless there were significant changes in the employment environment that warranted an earlier review.

In light of some comments received during the Forum's first review (October 2005), it was agreed to give further consideration to the **timing** of updating of the minimum wage. In view of their administration arrangements (pay increases, contract changes, tariff agreements, etc), some industries are more likely to be affected by the timing of minimum wage increases than others. If 1st April is considered by those industries to be inappropriate, the Forum agreed that the timing of updating could be reviewed and a new recommendation made to the Minister.

The responses included;

Seymour Hotels - *"1st April is fine for our business, provided we are notified of any increase well in advance."*

Jersey Civil Service Association – *"If it is advantageous to local business to update at a different time we have no objection."*

Association of Clerical, Technical and Supervisory Staffs (ACTSS - the Jersey Civil Service Branch of the Transport and General Workers Union (TGWU)) - *"We should adopt whichever month local businesses agree is most beneficial to them."*

Some respondents suggested that an eventual increase date of 1st January would be more appropriate, including a large retail employer and the Jersey Farmers'

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Union (JFU), who said that it was *“of no real importance but 1st January would probably be a better day as it is the start of the new season.”*

The Forum considered whether 1st January would be a more appropriate date in future, however given the absence of responses suggesting business or economic reasons for that date, and the comments signifying that the length of notice of new minimum wage rates was more critical to businesses than the date itself, the Forum is minded to agree with the Jersey Advisory and Conciliation Service (JACS) response;

“Providing business receives adequate notice, allowing following season’s tariffs, prices etc, to be set, there seems little purpose in changing what is now becoming an established date.”

The Forum understands from responses received during this review that Hospitality employers are the most likely to be negatively affected by the length of time between the announcement of new minimum wage rates and their subsequent enactment.

Seymour Hotels – *“It is normal practice in the tourism industry to set rates for the following season in the June of the preceding year. In the case of all year round operations...the rates take effect from the following January. Clearly setting the minimum wage rate at this time of year for the following April is too late. Jersey needs to plan for increases in the MW at least a year in advance as is the case in the UK. If the rate for April 2008 could be set by April 2007 that would greatly assist us in setting tariffs and planning our business in the June of 2007, thus resulting in more realistic rates and meaningful contracting with our customers.”*

Jersey Hospitality Association (JHA) – *“We would ask that the Employment Forum looks two years ahead, rather than the current cycle, which only gives six months notice of a possible rise.”*

The Forum notes that the Low Pay Commission (the Forum’s UK equivalent) recommends minimum wage rates for two or three years in advance. The proposed rates are then approved by the Government nearer the time of uprating, subject to consideration of any exceptional economic circumstances which might suggest that the rate should not be as previously recommended by the Low Pay Commission.

In order to provide such a “two year deal”, the Forum recognises that a formula of some sort will be necessary by which rates may be proposed with a greater length of notice than currently, and that it must be ensured that the Forum is working from an appropriate base figure.

The Forum is also aware that the Low Pay Commission often issues a simple invitation for comments on proposals, rather than a detailed questionnaire, as the Forum has done in previous consultations.

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The Forum recommends that the minimum wage should continue to be updated on 1st April.

The Forum recommends that minimum wage rates should be set further in advance than they are currently and that in order to do this effectively, a formula should be used, as described in the next section.

MINIMUM WAGE

Impact on Business

Most respondents indicated that the impact on their business of the 2006 increase in the minimum wage had been minimal.

Seymour Hotels and Graham Le Lay (an Agriculture employer) stated that their pay bills had increased by 5 to 10%. Seymour Hotels and the Jersey Farmers' Union said that they had increased the pay rates of higher grade staff to maintain pay differentials as a result of the last increase in the minimum wage.

Inflation

The Economic Adviser emphasized that this is a critical time for wage increases and inflation. He has advised that, *"The economy is performing strongly but it is at this point in the cycle where problems have arisen in the past with higher wages pushing up inflation. Policy should focus on trying to break this cycle of higher wages feeding into higher inflation and wage increases should therefore reflect productivity growth."*

The States are aiming for a 2% growth across the whole economy, across all sectors. Any modest increase in the minimum wage might have a minimal impact on the overall economy (as long as it did not lead to a wider restoration of differentials), but would have a greater impact on export driven sectors where the main competitors are elsewhere. Both the Tourism and Agriculture sectors have seen their output fall by about 20% between 1998 and 2005 and these are the sectors most likely to be affected by any increase in the minimum wage. Full consideration needs to be given to improving the competitiveness of these export orientated industries and increases in the minimum wage can hinder firms competitiveness, especially where they compete with low wage economies that do not have minimum wages."

Lawrence Huggler suggested that the rise is kept in line with cost of living as most of the jobs paid at or around minimum wage are in *"Tourism, Farming and Fulfilment that are competing in very tough price sensitive markets, I would suggest that a large rise above cost of living will cause job cuts. I would also suggest any large rise above inflation would cause further inflation as prices will have to rise to*

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cover wage cost increases negating any benefit of the large rise in the medium to long term."

The JHA *"would prefer modest and level increases each year, which are in line with the States' target of 2.5%. Any increase to the MW must be pitched at as economical a level as possible."*

Living Wage

The TGWU stated that "an important campaigning benchmark had been the development of the concept of a "living wage". The term "**living wage**" is used by its advocates to refer to the minimum hourly wage necessary for a person to achieve a certain standard of living. In the context of developed countries such as the United Kingdom or Switzerland, this standard generally means that a person working forty hours a week, with no additional income, should be able to afford a specified quality or quantity of housing, food, utilities, transport, health care, and recreation. This concept differs from the minimum wage in that the latter is set by law and may fail to meet the requirements of a living wage.

The national and international living wage movements are supported by many trade unions and community action groups.

Critics argue that basic economic theory suggests that a "living wage," is harmful to low wage workers and increases unemployment. Artificially fixing a price for labour above the market price causes a decrease in the overall demand for labour, leading to increased unemployment and a deadweight loss. Workers who lose their jobs would not receive the living wage. Furthermore, such wage increases can cause inflation, increasing the cost of living and decreasing the relative buying power of the living wage, which leaves the minimum wage earner no better off.

Critics also argue that there are alternative ways to deliver income support to the poor that don't have the large unemployment and deadweight loss effects of a living wage law.

The Rate

Responses varied on what rate the minimum wage should be set at; however the range was not as wide as might have been expected.

Of those respondents who suggested a specific rate or percentage increase, three respondents (with an Agriculture perspective) said that there should be no change to the current minimum wage rate. A pressure group, a union and a consultant suggested rates between £6.08 and £7.72. The other 14 responses ranged within a more limited bracket, between £5.37 and £5.62.

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Statistical Indices

The TGWU recommended that *“the minimum wage should continue to rise at a rate that exceeds the predicted growth in average earnings. The adult rate of the minimum wage should be more than £6.00 per hour by April 2008...increase by at least 14.7 per cent during the next two years.”*

JACS said that *“the suggested rates include a 4% increase. It is believed that the RPI yet to be published for Sept 06 or Dec 06 will show an increase from current level of 2.4%. It is believed that low earners (who simply receive a “cost of living” increase will suffer financially, particularly at a future date when GST is applied. It is believed, therefore, that the minimum wage should be steadily increased relative to inflation.”*

The Forum understands that the effect of GST will be taken into the 2007 average earnings data.

Jersey Royal said that *“a rise in earnings could be justified but does not support an increase more than RPI. It should be borne in mind that, as our staff have accommodation provided, we believe that the RPI figure that excludes the costs of house purchase, which we note increased by 2.8% during the 12 months to September 2006, is the appropriate yardstick to judge against. A further factor we think worthy of consideration is the fact that our industry is competing with jurisdictions which have lower wage costs than ours and lower inflation rates so, in order to remain competitive, we need to contain our costs to reasonable levels.”*

The Chamber of Commerce said that *“Any rate review should be formula-based to ensure consistency. We suggest this formula takes the mid-point between the increase in the average earnings figures published...in June each year and the retail prices index of the same time. This is consistent with the policy of the Social Security department when calculating pension increases.”*

Taking the relevant retail price index and average earnings figures for the total period since the minimum wage was set at £5.08 (July 2005), the resulting minimum wage rate for April 2007 as a mid-point between the two indices would be £5.47. Applying the same statistics to the period since the April 2006 rate of £5.24 produces a mid-point between the two indices giving a minimum wage of £5.40.

The Forum considered this to be a useful suggestion, however is advised that, since the early 1990's, the benefits paid under the Social Security Law have been indexed solely by the same percentage increase as the average earnings index calculated for June each year. The 'mid-point' formula suggested by Chamber was used prior to this date and is still used to uprate non-contributory benefits, but is no longer used to uprate contributory benefits such as pensions.

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The Association for the Taxation of Financial Transactions for the benefit of Citizens and Tax Justice Network (Attac & TJN) stated that *“the evidence in this report demonstrates that Jersey lags behind all the countries mentioned in this report when the cost of living is taken into account, but seems comparable to Luxembourg. Therefore, the Employment Forum should consider legislating and implementing a minimum wage of at least 45% of the median wage income...the countries covered in this report on average provide a minimum wage based on a forty-hour week that is at least 40% of the median wage income of said countries. However, Jersey has a much higher cost of living than all the countries considered in this report, except possibly Luxembourg, whose minimum wage is just over 45% of median wage income.”*

The Forum notes that the Attac & TJN report refers to the minimum wage rates in other jurisdiction for employees over the age of 21 and therefore would recommend caution given that Jersey’s minimum wage rates currently apply to all employees over the age of 16.

The Index of Average Earnings measures changes in average earnings (gross wages and salaries) that have occurred, and been paid, to workers in Jersey. It includes overtime payments, but excludes bonuses, employers’ insurance contributions, holiday pay and benefits in kind (e.g. free accommodation or meals). The 2006 Index measures changes in average earnings received between the last weeks of June 2005 and June 2006 and is designed to measure changes in average earnings by matching records in consecutive years from sampled firms.

The average weekly earnings for full-time equivalent employees in Jersey in June 2006 was £540 per week, based on a 40 hour week. Average earnings by sector ranged from more than £700 per week in financial services and the Public sector, to £300 per week in ‘Hotels, restaurants & bars’ and £340 per week in ‘Agriculture and fishing’. It should be noted that these weekly averages do not include the offsets for accommodation and food which frequently form part of the pay package in Hospitality and Agriculture, but do include earnings from overtime hours, which are often high in these two industries.

The Forum considers that it is logical to take the June figure of the preceding year and intends to use this formula each year to recommend rates for the following April, subject to consideration, only where necessary, of factors which have had a major impact on the economy, for example an exceptionally good or bad year in the finance industry.

Taking the assumed working week of 40 hours, 40% of the average earnings across all sectors of £540 per week, equates to £5.40 per hour.

In a letter to the Social Security Minister, dated 24th February 2006, Deputy Southern set out his views on the minimum wage and the Forum has taken this into consideration as part of the current consultation process. Deputy Southern has scrutinised the Forum’s calculations, where assumed rates of inflation were applied

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in order to give businesses adequate notice of new minimum wage rates before they come into effect.

Deputy Southern stated, *“Over the four year period, while average earnings across all sectors have risen by 18.6%, average earnings in Hospitality have risen by only 13% and overall agricultural earnings by only 2.6%. This is clear evidence that the gap between high and low earners has increased over the period. If we are, in the words of the committee “to make a difference to the low paid” we cannot allow a below average rise in the minimum wage when the low paid have already fallen so far behind. Hence the suggested rise is in line with AEI across all sectors of 5.3%, taking the minimum hourly rate to £5.42 for 2006.”*

The Forum notes that the Deputy was suggesting this as the rate that should have been implemented in April 2006. Continuing with Deputy Southern’s suggested method. The June 2006 average earnings data show a 3.3% rise across all sectors which would give a minimum wage for April 2007 of £5.60. According to Deputy Southern, this would keep Jersey’s minimum wage above the relative low income threshold.

The Forum considers that having taken 40% of average earnings as the indicator for the 2007 rate, the Deputy’s views on the failings of previous uprating methods are minimised, as the figure does not reflect simply an increase on the previous rate, and therefore provides a more appropriate base figure from which to uprate in future.

In making its recommendation, the Forum has been influenced by the Economic Advisers advice regarding the States inflation policy and caution regarding the competitiveness of export driven industries. The Forum would emphasize that if the States of Jersey wishes to raise the bottom end of earnings, the minimum wage must equate to more than 40% of the average wage in future. Ideally, the Forum would aim to gradually increase the percentage of the average wage used in the formula towards 45% in the future. For example, 40.5% of the average wage would have given a minimum wage of £5.47 for April 2007. The Forum intends to take this into account in its 2007 internal review of the proposed uprating mechanism.

The Forum recommends a minimum wage of £5.40 to apply from 1st April 2007

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

The Forum recommends 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 will be re-assessed via an internal review, before it is utilised to recommend a rate for 1st April 2009.

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TRAINEE RATE

The responses received, in the main, did not suggest that that trainee rate should be increased significantly above or below any increase in the minimum wage. However, two Agriculture respondents suggested that there should be no increase in the rate and Air Conditioning Jersey said that the rate is much too low for today's cost of living and suggested an increase to £4.50.

Most respondents proposed an equivalent increase to their suggested increase in the minimum wage, for example by the same index, or 75% of the minimum wage.

The Forum considers 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.

The Forum recommends a trainee rate of £4.05 for April 2007 and 75% of the full minimum wage for April 2008, as set by the formula specified above and subject to approval by the Minister following the release of the June 2007 average earnings index.

The Forum also received a number of other comments about the trainee rate.

JACS – “Work experience where students are undertaking a full time course that has a requirement for them to gain workplace experience. It can be difficult to obtain that placement if the employer must pay £5.24 per hour.”

The Forum recognises this issue and understands that the Social Security Department has recently given this matter some consideration, particularly in relation to Project Trident students. It is understood that such students are unlikely to be considered “employees” under the Employment Law, however legal advice is required to clarify this. If the Law as currently drafted excludes students, this must be explained in the code of practice, however if it does not, and students undertaking work experience placements must be treated as “employees”, the Forum recommends that an amendment is made to the Law.

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

A large retail employer (anonymously) stated that they would *“find the trainee rate valuable if available for training in periods of around 6 months.”*

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The Forum wishes to emphasize that accredited training does not have to be undertaken for the full year, as long as it meets the criteria set out in the code of practice, or as required by the recently approved logging procedure for in-house training.

Communication Workers Union (CWU) – *“We believe that this provides ample flexibility for employers to provide training, but we think the period of one year is too short. Should be looking at 18-24 months.”*

JACS – *“Experience suggests that the “jump” from £3.84 to £5.24 is too great to encourage some smaller, specialist employers to offer training places. It is considered that a 2 year trainee rate may be sensible for accredited training. Suggested rates (current values) are £3.94 in year 1 and £4.59 in year 2, moving to the adult Minimum Wage in year 3.”*

The Forum considered that longer training periods might be useful for employers, however has concerns about introducing too many different rates which would make the system confusing. The intention has always been to keep the minimum wage as simple as possible.

JACS – *“Concern has been raised in regard to young employees in, for example, hairdressing, who start work as a Saturday/vacation employee (from age 16) but do not start full-time work and formal training for perhaps a year or 18 months – by which time they have in excess of 1 year’s service, even though they have only actually worked for perhaps a total of 5/600 hours for that employer. The Law currently requires the employer to pay £5.24 after 1 year, and this has caused problems. Possibly the Trainee rate could apply in the first year of full-time employment during which an accredited training scheme is followed.”*

A solution would be to allow only the first full time permanent contract to be taken into account for the purposes of the trainee rate, not holiday or week-end work. However, in the absence of a youth rate, those week-end and holiday jobs would have to be paid at the minimum wage, which would not alleviate the difficulties experienced by Raffray Ltd;

“We recruited a youngster who wanted to earn some extra pocket money prior to him starting at college. On enquiring if we could pay him the trainee rate, i.e. same as a trainee with one year’s college experience, we were told we couldn’t and we had to pay him the higher rate, the minimum wage. We feel this is rather unfair to us and him as he didn’t have any experience and once he has completed the foundation course at Highlands he would then be employed for his first year at the lower trainee rate. It is also unfair on any other staff already on the trainee wage having completed the foundation course at Highlands College and having more experience than the holiday worker. We therefore think a youth rate could be introduced to cover this anomaly.”

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The Forum considers that rather than introducing a complex solution to these issues, such as two different training rates, or widening the scope of the trainee rate, which could leave it open to abuse, a simple solution would be to introduce a youth rate, which is discussed in the next section.

YOUTH RATE

The responses suggested a good deal of support for a youth rate, including the following comments;

JHA – “as a result of the changing employment situation locally whereby school leavers have found difficulty in finding jobs. We believe employers are being discouraged from employing younger people as a result of having to pay them the MW.”

Raffray Ltd - “We understood that the minimum wage was introduced to protect full time workers from being exploited, not to make employers pay 16 year old holiday staff working for some pocket money before starting college more than proper trainee staff.”

The Jersey Rights Association (JRA) said that employers “are overwhelmingly reluctant to employ an inexperienced 16-year old, when an 18 or 19 year old ... with much more experience of life and work, will cost them no more money than the 16-year old. A clear recognition of this attitude is certainly the politically accepted view in the UK, whose legislation we have followed to a major degree, except where lower pay rates for young people are concerned.”

Chamber of Commerce – “If there was evidence of increasing unemployment amongst young people then such a move might be deemed necessary.”

Those opposing a youth rate included;

David Rotherham – “One of the most fundamental purposes of minimum wages is to prevent “cheap labour” undercutting the established workforce...I do not believe it would be right for mature adults with homes and families to be denied employment, because of the availability of young people as a cut-price alternative.”

The Forum asked Andrew Gibbs (Head of Careers & Work Related Learning at the Education, Sport and Culture Department) if he thought that there might be an increase in the number of employers aiming vacancies at 16 and 17 year olds if a youth rate was introduced, in order to avoid paying the full minimum wage or provide training, which might then be to the detriment of older workers. His view was that this would depend very much on the sector; for many customer facing areas, experience would take on an increasing importance.

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The Forum considers that the opportunity for cheap labour is unlikely to encourage an employer to choose an inexperienced 16 year old over an older worker, particularly in the retail sector. The UK's Low Pay Commission reached the same conclusion when it recommended a youth rate for the UK.

The UK's youth rate has only recently been introduced; from 1st October 2004 at a rate of £3.00 per hour. The rate was not increased in 2005, but was increased to £3.30 in October 2006. It must be remembered that the UK adult rate applies to workers over the age of 22 (not over 16 as in Jersey) and there is a development rate for workers aged 18 to 21.

Other jurisdictions apply a variety of scales and percentages of the full rate, sometimes depending on length of service. For example, in Australia, the full minimum wage applies to over 21s, and below age 21, a sliding scale applies from age 16 (40-50% of full rate), through to age 18 (65 to 80%). In Ireland, the full minimum wage is paid two years after the first employment is acquired after the age of 18, unless undergoing structured training. Employees under 18 are entitled to 70% of the full rate. The Forum intention is to keep things simple so that employers and employees are clear on their rights and responsibilities.

JACS – “If an employee is not undergoing accredited training it seems reasonable they should be paid the established MW in return for undertaking a non-trainee “adult” job.”

The Forum considers that an important point here is whether the employee is actually undertaking an “adult” job. There are often situations, particularly in Retail and Hospitality, 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.

The Forum considers that a youth rate should be payable to employees aged 16 to 18, but only those who are in full time education, either undertaking holiday, weekend or evening work. Any employee working full time and not in full time education between the ages of 16 and 18 should be paid the full rate. The Forum recognises that an appropriate or established definition of what constitutes “full time education” will be required.

The youth rate should not be payable where the employee is undertaking a “work experience placement” as an educational requirement within an academic establishment, or as a requirement of a full time training course, as explained in the previous section regarding the Trainee rate.

The Forum recommends that guidance should be developed with assistance from JACS to ensure that employers develop appropriate contracts for employees who are being paid the youth rate, in order to protect both parties, based on the understanding that the employee is to remain in full time education.

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It had been suggested that the youth rate should be lower than the trainee rate; however it was considered that this would be more likely to discourage training. Also, taking into account the desire for an uncomplicated minimum wage system, the Forum recommends that the youth rate should be paid at the same rate as the trainee rate and calculated in the same way; 75% of the full minimum wage.

The Forum recommends a youth rate of £4.05 to apply from 1st April 2007 payable only to employees aged 16 to 18 who are in full time education.

The Forum also recommends that guidelines should set out in what circumstances the youth rate should apply.

The Low Pay Commission in Chapter 7 of its 2005 Report, stated that *“our ability to increase the adult rate by slightly more than average earnings depends on the continued existence of lower rates for younger people. Evidence suggests that the application of the adult rate to younger people would have adverse employment consequences, given the distinctive features of the labour market for young people.”*

The Commission goes on to say that a youth rate is consistent with the Equal Treatment Directive and does not constitute discrimination where there is objective and reasonable justification by a legitimate aim.

The Forum proposes that if the youth rate is approved, this will be taken into account in the 2007 review of the percentage of average earnings to be used in the calculation of the minimum wage for the following two years.

ACCOMMODATION AND FOOD

JACS – *“It is believed that employees and employers are relatively happy with the existing provisions and, therefore, they should be increased in line with the Minimum Wage increase.”*

The TGWU suggested that the accommodation offset should be £29.05, in line with the UK rate.

Darius Pearce recommended a total offset of £110 *“to reflect realistic value of the services provided, however this is inclusive of all bills...and is comparable to market rents on one room accommodation available to non-qualified persons.”*

The food offset is intended to reflect the very different situations in Hospitality and Agriculture. As these were the two industries most likely to be affected by the introduction of a minimum wage, the Forum took into consideration the different pay packages and procedures from early on in the development of the minimum wage system. In order to be fair to both industries, this flexibility was necessary. The

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Forum always recognised that the minimum wage would have been much lower were it not for the relatively high offsets. If the current offsets were to be reduced, the Forum would recommend that the minimum wage should be reduced accordingly.

The Forum considers that it would be entirely inappropriate to reduce the rate of the offsets to that of the UK minimum wage system, or to have only one rate for accommodation at £29.50. The higher value of the offsets in the Jersey minimum wage system was not intended to reflect the actual cost of accommodation in Jersey, but is intended to reflect the very different situation of a migrant worker in retail who has to pay for their own accommodation, compared with a migrant worker in Agriculture or Hospitality who is provided with accommodation.

CWU – “This deduction from pay can easily be exploited by employers. What is the difference in definition of 3 adequate meals between a group of employers. Are the conditions of accommodation the same at all employers?”

“JACS has experienced some problems with the provision of food e.g. Agriculture, where 2 meals are provided per day, but difficulty exists in providing a midday meal due to the work location. It is understood that some employers have agreed with their staff to only charge them 2/3rds of the “food element” of the offset. Some (few) problems have occurred where cafes/restaurants have wanted to charge a “food only” offset.”

The Forum appreciates that the two offsets may be difficult to monitor for abuse. A public health code of practice is available which sets out accommodation standards and in previous Forum reviews it has been claimed that industry standards meet this code. However, the Forum appreciates that the food offset might be more open to abuse and encourages the Social Security Department and JACS to ensure 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.

It is particularly interesting to note that two of the respondents; one large Agriculture employer and one large Hospitality employer, both stated that the current levels of offset are acceptable, rather than suggesting that they wish to offset larger amounts for food and accommodation against the minimum wage. The Forum considers that no evidence has been presented to suggest that the offsets should be treated any differently than the minimum wage, or that the offsets should be increased to a greater degree than the minimum wage rate.

The Forum recommends that the accommodation and food offsets should be increased proportionately to the minimum wage rate for 2007, which provides a maximum accommodation offset of £59.10, and a maximum food and accommodation offset of £78.80.

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Utilities bills

JACS raised a concern regarding charges for electricity in addition to the offset for accommodation. *“Some employers charge extra for fuel or for laundry services (e.g. Agriculture), while on the whole, Hospitality tend not to charge extra.”*

There were few respondents whom this set of questions applied to, however JACS view was supported by the two that did comment. Seymour Hotels stated that all utility bills are included in the accommodation offset and the JFU said that *“Industry members usually charge for electricity. If electricity is allowed free, staff abuse the privilege and are not worried about saving energy.”*

The Forum appreciates the environmental arguments for limiting the waste of energy, however considers that the practice of charging premium rates via a meter is unacceptable.

Although referring to the UK, the TGWU also state that - *“One of the key problems for migrant workers in particular is the practice of employers taking illegal deductions from their wages, particularly by abusing or avoiding the accommodation offset. In addition, many employers and employment agencies make illegal deductions for transport, meals utilities and even so-called ‘administrative fees’ in the case of some employment agencies. The Government must monitor the use of the accommodation offset and deal firmly with abuse, in addition, the practice of making illegal deductions must simply be stamped out.”*

The practice of charging for additional bills appears contrary to the purpose of the Forum’s original recommendation that only two offsets may be charged against the minimum wage.

The UK has recently issued for public consultation a proposed guidance booklet on its accommodation offset. The guide refers to a UK Employment Appeal Tribunal decision that the accommodation offset **includes** charges due from the worker to the employer in respect of the provision of living accommodation, for example, changes made by the employer for electricity and gas. The judgement has been appealed to the Court of Appeal and it is hoped that a decision will be forthcoming shortly.

The Forum recommends that the Social Security Department and JACS base their advice and enforcement on the outcome of this appeal as to whether the practice of charging an additional amount for utilities bills is acceptable, or whether such bills are to be treated as part of the charge for living accommodation.

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THERAPEUTIC WORK

Since the Employment Law has been in force, the Forum understands from JACS and the Social Security Department that only a handful of queries have been received about therapeutic workers, most of which have related to the relationship between benefit entitlements and the right to receive the minimum wage.

In the Forum's previous review, one respondent suggested that therapeutic work should be given further consideration, so additional questions were included in the latest review. However, none of the respondents to this review stated that they employ any therapeutic workers and only two general comments were made about therapeutic workers, by JACS and the TGWU.

JACS – “Despite the code, problems still exist where the “employee” clearly would not normally be employed in that role were it not for the fact that the employer was attempting to assist that employee e.g. in some care homes where less able, but caring, individuals are “employed” to sit and chat or make tea whenever they are able – for some remuneration. On the whole, however, JACS has experienced very few issues/problems concerning therapeutic workers.”

The code of practice states “If money is paid by the employer to an individual, there may still be no employment contract if there is no mutual obligation between the parties i.e. the individual is genuinely not obliged to perform duties and the employer is genuinely not obliged to provide the activity or pay the individual. However a payment is often indicative of a contractual relationship and any payments made will be carefully scrutinised by the Tribunal and courts. If they are genuinely not linked to a mutual obligation between the parties then it is unlikely that a contract will be inferred and the Employment Law will not apply.”

Depending on the specific circumstances of the case referred to by JACS, it is possible that a tribunal would determine that the person in question is not an “employee”, the key point being, that they turn up only when they are able to, and there is no obligation for the person to perform those duties.

“The TGWU is concerned that the provisions on therapeutic work are still being widely abused. In the UK a recent DWP report has confirmed this state of affairs in the case of employment workshops for people with learning difficulties. A worrying number of local authority and voluntary sector employment providers are paying workers with learning difficulties less than the minimum wage even when it was clear that they were involved in an employment relationship.”

The TGWU's comments refer to the UK where therapeutic work schemes are different from those in Jersey, however further information has been requested about the problems experienced in the UK.

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OTHER ISSUES

A number of additional issues have been raised during the consultation process which the Forum wishes to address.

Tips

JACS commented that *“The provision whereby tips and gratuities (when processed through payroll) can form part of the Minimum Wage is seen as inequitable, where it occurs, as it appears to fly in the face of the intention of the giver.”*

The Forum notes that this provision also exists in the UK. Article 8 of the Minimum Wage Regulations states that any payment 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 in assessing whether the minimum wage has been paid.

The Forum considers that an unscrupulous employer would simply not distribute the tips received via the payroll at all, thereby being of no additional benefit to the employee. To oblige employers to re-distribute tips received via the payroll would be very difficult to monitor or enforce.

The Forum shares JACS concern and agrees that it appears contrary to the intention of the giver. However, in the process of considering how this might be addressed in the legislation, the Forum has reached the conclusion that there is no simple solution to this matter.

Record of hours worked

JACS stated that *“It would be useful if those employers who pay at, or near, the Minimum Wage were more forcefully obliged to provide detailed pay-slips including hours worked – rather than the current position whereby employees have a “right” to a pay-slip under EL Article 51 (1) and (2) – i.e. they can ask for one.”*

The Forum is advised that the Social Security Department is aware of this issue and encourages the Minister to make an appropriate amendment to the Employment Law to ensure that employers must give pay slips to their employees, not only when requested by the employee.

JACS also commented that the *“Effect on business has been to increase the number of wage disputes, particularly where the written terms of employment do not specify an hourly rate of pay but a weekly rate for, say 42 hours e.g. £220.80 per week. Problems arise, particularly in smaller establishments, when the employee works additional hours but still receives a flat £220.80 gross wage. The employers rarely maintain adequate records of hours worked, hence the disputes.”*

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Again, the Forum is advised that the Social Security Department is aware of this issue and encourages the Minister to make an appropriate amendment to the Employment Law and the Minimum Wage Order, as necessary, to ensure that the pay slip includes a record of the number of hours worked in each pay reference period.

The Forum also suggests that the Social Security Departments give consideration to requiring employers to record each employees' actual and contractual hours worked on contribution schedules.

Variable Hour Contracts

JACS have stated that the legislation relating to minimum wage "pay reference periods" has raised problems where some Hospitality employers pay their staff a regular weekly wage, for example, 42 hours at the minimum wage, but operate a "variable hour" system over a monthly period. As staff are paid weekly, the employer is in breach of minimum wage law in weeks where the employee has worked more than 42 hours, despite the fact that over the period of one month, the total pay is sufficient for the hours. Legally speaking, the staff should be placed on variable hour contracts and paid for the actual hours worked in that week, however neither staff nor management appear to want this.

The Forum suggests that drafting and legal advice would be required, however, Article 3 of the Minimum Wage Order could be amended to provide the flexibility for the pay reference period for weekly paid employees to be averaged over "one calendar month", if agreed by the employer and employee in a relevant agreement.

Trainee rate and offsets

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

In practice, this is unlikely to be a problem, as only the Hospitality and Agriculture industries use the offsets and these industries rarely, if ever, pay the trainee rate. However, the Forum recommends that an appropriate amendment should be made to ensure that this cannot happen, particularly in view of the proposal to introduce a youth rate, as a youth rate is more likely to be used in the Hospitality industry than the trainee rate. The Agriculture industry has in a previous consultation indicated that youths are paid at the same rate as adults.

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SUMMARY OF RECOMMENDATIONS FOR 1ST APRIL 2007

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