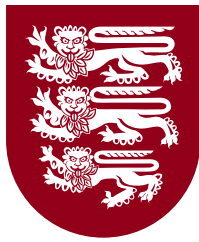


# STATES OF JERSEY



Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 13) (JERSEY) LAW 202-**

---

**Lodged au Greffe on 2nd June 2023  
by the Minister for Social Security  
Earliest date for debate: 18th July 2023**

---

**STATES GREFFE**



Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 13) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 13) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.E. Millar of St. John, St. Lawrence and Trinity**  
*Minister for Social Security*

Dated: 1st June 2023

---

## Report

---

### Introduction

In its 16<sup>th</sup> report on the minimum wage in Jersey, published on 8<sup>th</sup> September 2022, the Employment Forum recommended that the way in which minimum wage offset rates are currently set should be changed. The Forum concluded:

*“...the minimum wage rate process and the offset rate process should be harmonised, and that both should be set by Ministerial Order in future years. This will require amendment to the Employment Law. The Forum notes that changing to a harmonised process will still enable States’ Members to challenge the rates proposed by the Minister for Social Security by way of motions to annul a Ministerial Order and Propositions to set alternative rates.”<sup>1</sup>*

The Minister for Social Security has accepted this recommendation of the Forum and has decided to bring forward legislation to give the change effect. The Minister brings forward these amendments now, so that they can have effect in good time for the rate changes in January 2024.

### Intended changes to the current legislation

At present, the offset rates – those amounts prescribed in legislation which employers may deduct from an employee’s wages for food and/or accommodation – are set by Regulations, the States Assembly having agreed to them. The amendment to primary law, which the Minister proposes, would mean that, from 1 January 2024, such amounts would be set by Ministerial Order, in line with the current process for setting the rate of the minimum wage itself. The Forum concluded, and the Minister agrees, that there is no good reason for there to be a difference in process, and that the Minister should be able to set all new rates associated with the minimum wage in a single process.

### Primary law amendments to the [Employment \(Jersey\) Law 2003](#) (the “Employment Law”)

Article 17 of the Employment Law provides for the ability of the States to make Regulations relating to the remuneration of an employee, including in relation to the offset rates.

New Article 17A of the Law provides for the Minister to be able to make an Order specifically prescribing the monetary amount of “benefits in kind”. In this context this means the amounts of the offsets an employer may deduct for food and/or accommodation. This provision of the new Article has the effect of moving the offset rate-setting process from Regulations to Ministerial Order.

New Article 17A also makes an amendment to provide that the Minister may not make an Order to set the offset rates unless the Minister has made a referral to the Employment Forum for its consideration of specific matters, to which has been added the monetary amount to be allowed for the offset rates. This element brings the referral process to the Forum into line with the existing requirement under Article 17 for it to consider the level of the minimum wage before the Minister may make an Order in that respect too.

### Other amendments to the Employment Law

The Minister is taking this opportunity to make a further amendment to the Employment Law. The Law currently provides (Articles 16(7) and 17(8)) for a prohibition on setting minimum wage and offset rates which treat different persons differently in relation to certain criteria.

---

<sup>1</sup> [Jersey Employment Forum 16<sup>th</sup> Report on the minimum wage](#) – P.6

Articles 16(7)(e) and 17(8)(e) prohibit such differentiation on the grounds of race and gender, which are protected characteristics under the Discrimination Law. The Employment Law predates the Discrimination Law by some years and the Minister considers it is appropriate and important to update the specific provisions of the Employment Law in this respect.

The proposed amendment to Article 16(7)(e) and Article 17(8)(e) - and adding new Article 17A(2)(e) - would encompass all the current protected characteristics prescribed in the Discrimination Law, save for that of age, which is an exception to a prohibited act – in other words, the Discrimination Law permits different rates to be prescribed on the grounds of age. That will continue to be the case. The reason for retaining the exception for age is that it continues to reflect the existing minimum wage requirements which only apply to those over the statutory school leaving age.

Amending the Employment Law in this way would ensure that future additions to the range of protected characteristics in the Discrimination Law would automatically be caught by the provisions on differentiation in the Employment Law.

### **Consequential amendments to other Jersey legislation**

As a result of the primary law amendments, changes will need to be made to the legislation which stipulates the levels of the minimum wage and offsets and which brings the offset and minimum wage rates into effect.

Principally, this means inserting into the [Employment \(Minimum Wage\) \(Jersey\) Order 2007](#) a provision relating to the power to make offset rates for food and accommodation. The 2007 Order is the vehicle by which the actual minimum wage and – in future – the offset rates will be prescribed, so that employers are legally obliged to both pay the minimum wage rate and not exceed the offset amounts prescribed when deducting from wages the costs of food and accommodation.

Consequential amendments are also made to the [Employment \(Minimum Wage\) \(Jersey\) Regulations 2004](#) to remove the specific references to the amounts allowed for in the offset rates, now that they will be contained in the 2007 Order. This reflects the fact that the power to make these monetary rates will move from Regulations made by the States to Orders made by the Minister.

The power of the States to make Regulations under the 2004 Regulations, as currently provided for in any other respect, remains unaffected by the proposed amendments relating to offset rates.

### **Financial and manpower implications**

There are no financial or manpower implications arising for the States from these amendments.

### **Human rights notes**

No human rights notes are annexed because the Law Officers' Department have indicated that the draft Law does not give rise to any human rights issues.

---

### **Re-issue Note**

This projet is re-issued to rectify an error in the report which resulted in there being two almost identical paragraphs.

---

## EXPLANATORY NOTE

---

The Draft Employment (Amendment No. 13) (Jersey) Law 202- will, if passed, amend the Employment (Jersey) Law 2003 (the “Law”), and subordinate legislation made under it, to allow the Minister to prescribe offsets against the minimum wage by Order.

*Article 1* amends the Law. It amends Articles 16 and 17 so that Order and Regulations made under those provisions may not make different provision based upon characteristics protected under Schedule 1 of the Discrimination (Jersey) Law 2013. It also makes amendments to the part sub-heading for and Article 17 to better reflect the contents of Article 17 and a new Article 17A.

The new Article 17A provides the Minister with a power to prescribe by Order the monetary amount to be attributed to an employer’s provision of benefits in kind (food and living accommodation) when calculating a person’s hourly rate of remuneration. These monetary amounts are currently set by Regulations under Article 17.

Amended Article 18 extends the Minister’s duty to refer matters to the Employment Forum so the Minister must refer matters he intends to prescribe by Order under the new Article 17A. A minor amendment to the title of Article 18 is made to better reflect its content.

Finally, Article 104 is amended so that Orders made under Article 17A are not subject to Article 104(4)(a), which permits different provision in relation to different cases, circumstances or classes of person.

*Article 2* amends the Employment (Minimum Wage) (Jersey) Regulations 2004 (the “2004 Regulations”) by deleting Regulation 9, which prescribes the monetary amounts attributed to an employer’s provision of benefits in kind. It also amends other references to Regulation 9 so that they refer instead to the new Article 17A Order-making power contained in the Law.

*Article 3* amends the Employment (Minimum Wage) (Jersey) Order 2007 (the “2007 Order”). It inserts a new Article 3A, which prescribes the maximum monetary amounts attributed to employers’ provision of benefits in kind. It improves the clarity of the wording of Article 3 and deletes Article 4(6) which is obsolete considering the contents of Article 16 of the Electronic Communications (Jersey) Law 2000.

*Article 3(6) and Article 4* work together to relocate Article 5 of the 2007 Order as a new Article 4A of the Employment (Awards) (Jersey) Order 209. This is because it is of general application rather than having relevance solely to detriments relating to the non-payment of the minimum wage.

*Article 5* gives the title by which this Law may be cited and provides that this Law is to come into force 7 days after it is registered.



Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 13) (JERSEY) LAW 202-**

### **Contents**

---

#### **Article**

1	Employment (Jersey) Law 2003 amended.....	7
2	Employment (Minimum Wage) (Jersey) Regulations 2004 amended.....	8
3	Employment (Minimum Wage) (Jersey) Order 2007 amended .....	8
4	Employment (Awards) (Jersey) Order 2009 amended .....	9
5	Citation and commencement .....	9



Jersey

## DRAFT EMPLOYMENT (AMENDMENT No. 13) (JERSEY) LAW 202-

A **LAW** to further amend the [Employment \(Jersey\) Law 2003](#), and related legislation.

---

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

### 1 [Employment \(Jersey\) Law 2003](#) amended

- (1) This Article amends the [Employment \(Jersey\) Law 2003](#).
- (2) In Part 4 for the sub-heading “*Regulations relating to the minimum wage*” there is substituted –

*“Determination of whether the minimum wage has been paid”.*

- (3) In Article 16 –
  - (a) for paragraph (7)(e) there is substituted –
    - (e) a protected characteristic in Schedule 1 to the [Discrimination \(Jersey\) Law 2013](#) except for age.”;
  - (b) paragraph (8) is deleted.
- (4) In Article 17 –
  - (a) for the heading there is substituted “**Regulations relating to the determination of hourly rate of remuneration**”;
  - (b) in paragraph (5)(b) after “benefits in kind” there is inserted “except in relation to the maximum monetary amount to be attributed under Article 17A”;
  - (c) for paragraph (8)(e) there is substituted –
    - (e) a protected characteristic in Schedule 1 to the [Discrimination \(Jersey\) Law 2013](#) except for age.”;

- (d) paragraph (9) is deleted.
- (5) After Article 17 there is inserted –

#### **“17A Orders relating to the determination of hourly rate of remuneration**

- (1) If Regulations under Article 17 make provision in relation to benefits in kind, the Minister must prescribe the maximum monetary amount to be attributed to those benefits in kind when determining what is the hourly rate at which a person is to be regarded for the purposes of this Law as remunerated by his or her employer in respect of his or her work in any pay reference period.
- (2) No provision shall be made under this Article which treats the same circumstances differently in relation to –
  - (a) different areas of Jersey;
  - (b) different sectors of employment;
  - (c) undertakings of different sizes;
  - (d) persons of different occupations; or
  - (e) a protected characteristic in Schedule 1 to the [Discrimination \(Jersey\) Law 2013](#) except for age.”.
- (6) In Article 18 –
  - (a) in the heading “**The first**” is deleted;
  - (b) in paragraph (1) after “Article 16(3) or (4)” there is inserted “or 17A”;
  - (c) in paragraph (2) after sub-paragraph (b) there is inserted –
    - “(ba) what maximum monetary amount to be attributed to an employer’s provision of benefits in kind should be prescribed under Article 17A;”;
  - (d) in paragraph (4) after sub-paragraph (c) there is inserted –
    - “(ca) to make an Order under Article 17A prescribing the maximum monetary amount to be attributed to an employer’s provision of benefits in kind which differs from the maximum amount recommended by the Forum;”.
- (7) In Article 104 in paragraph (5) after “Article 16(3)” there is inserted “or 17A”.

## **2 [Employment \(Minimum Wage\) \(Jersey\) Regulations 2004](#) amended**

- (1) This Article amends the [Employment \(Minimum Wage\) \(Jersey\) Regulations 2004](#).
- (2) In Regulation 1, after the definition of “standard pay”, there is inserted –
  - “ “the Law” means the [Employment \(Jersey\) Law 2003](#);”.
- (3) In Regulation 4 for “[Employment \(Jersey\) Law 2003](#)” there is substituted “Law”.
- (4) In Regulations 7(1)(d) and 8(2)(a) for “determined in accordance with Regulation 9” there is substituted “prescribed by Order made under Article 17A of the Law”.
- (5) Regulation 9 is deleted.

## **3 [Employment \(Minimum Wage\) \(Jersey\) Order 2007](#) amended**

- (1) This Article amends the [Employment \(Minimum Wage\) \(Jersey\) Order 2007](#).



- (2) In Article 1 –
  - (a) after the definition “employee” there is inserted –

“ “food and living accommodation” has the same meaning as in the [Employment \(Minimum Wage\) \(Jersey\) Regulations 2004;](#)”;
  - (b) after the definition “the Law” there is inserted –

“ “living accommodation” has the same meaning as in the [Employment \(Minimum Wage\) \(Jersey\) Regulations 2004;](#)”.
- (3) In Article 3(1)(a) and (3)(a) for “not shorter than one calendar month” there is substituted “one calendar month or longer”.
- (4) After Article 3 there is inserted –

### **“3A Monetary amounts that may be attributed to the employer’s provision of benefits in kind**

- (1) Where the employer provides food and living accommodation, the maximum monetary amount attributed to the employer’s provision of benefits in kind is –
  - (a) in the case of an employee who is a trainee, £114.97 per week or £16.42 per day; and
  - (b) in any other case, £153.28 per week or £21.90 per day.
- (2) Where the employer provides living accommodation but does not provide food, the maximum monetary amount attributed to the employer’s provision of benefits in kind is –
  - (a) in the case of an employee who is a trainee, £86.25 per week or £12.32 per day; and
  - (b) in any other case, £115 per week or £16.43 per day.”.
- (5) Article 4(6) is deleted.
- (6) Article 5 is deleted.

## **4 [Employment \(Awards\) \(Jersey\) Order 2009](#) amended**

After Article 4 of the [Employment \(Awards\) \(Jersey\) Order 2009](#) there is inserted –

### **“4A Maximum amount of compensation for detrimental treatment**

The maximum amount of compensation that may be awarded under Article 33(1) of the Law must not exceed the maximum amount of a payment that the Tribunal may order under Article 86(6) of the Law.”.

## **5 Citation and commencement**

This Law may be cited as the Employment (Amendment No. 13) (Jersey) Law 202- and comes into force 7 days after it is registered.