

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY THE CONSTABLE OF GROUVILLE
ANSWER TO BE TABLED ON TUESDAY 1ST NOVEMBER 2016**

Question

Would it be lawful and Human Rights compliant to introduce different minimum wages for different industries or seasonal workers?

Answer

Article 16 of the Employment (Jersey) Law 2003 (the “2003 Law”) enables provision to be made for the minimum wage of employees working in Jersey. Article 16(2) of the 2003 Law and the Employment (Minimum Wage) (Jersey) Regulations 2004 make provision about who qualifies for the minimum wage and do not distinguish between employees in different industries or employees working seasonally. The amount of the minimum wage is prescribed by the Minister for Social Security under Article 16(3) and does not discriminate on either basis.

Article 16(6) of the 2003 Law provides the States Assembly with the power to change who qualifies for the minimum wage. However, Article 16(7) of the 2003 Law provides that this power cannot be used to treat different areas of Jersey, sectors of employment or occupations differently. Further, Article 104(5) of the 2003 Law limits the power of the Minister for Social Security to prescribe the amount of the minimum wage so that it does not appear to extend to making different provision in relation to particular industries or for seasonal workers.

In view of these limits on the powers of the Assembly and the Minister in the 2003 Law, the issue of the human rights compliance of any such change does not arise, but setting different minimum wages for different industries or seasonal workers is unlikely to breach the rights set out in the European Convention on Human Rights.

Setting different minimum wages for different industries or seasonal workers might lead to conflict with the effect of the Discrimination (Jersey) Law 2013. For example, if an employer pays a seasonal employee less than a permanent employee for the same work it might be argued that the employer is engaging in a prohibited act of indirect discrimination contrary to Article 10 of the 2013 Law if the effect of setting different rates of pay were disproportionately prejudicial to people with a particular protected characteristic. Further consideration may need to be given to the resolution of this apparent conflict if a change to the minimum wage of this nature were proposed.