

STATES OF JERSEY



MINIMUM WAGE RECOMMENDATION

**Presented to the States on 6th January 2004
by the Employment and Social Security Committee**

STATES GREFFE

REPORT

Introduction

The following report is intended to provide information regarding the likely rate of minimum wage, so that interested parties can be aware prior to the drafting of subordinate legislation in early 2004. Members will recall that the minimum wage system is enshrined in the Employment (Jersey) Law 2003 approved by the States in July 2003.

Background

A "Minimum Wage Legislation" Report and Proposition was lodged in March 1999 (P.227/1998) at the request of the States, following an impact study and consultation process. The States subsequently voted in favour of the introduction of a Minimum Wage system and also the setting-up of a consultative body known as the Employment Forum. The Forum was established in August 1999 to support the development of employment legislation and to consult on, and monitor, Minimum Wage, reporting to the Committee with recommendations. It consists of 3 employee representatives, 3 employer representatives and 3 independents.

The Committee was advised by the Law Draftsman that a Minimum Wage Law would not be workable without the introduction of legislation giving protection to employees from unfair dismissal and having appropriate conciliation and enforcement mechanisms in place. As a result, the Committee took an "Employment Legislation" report (P.99/2000) to the States for debate in December 2000. This Report recommended that legislation should be phased, the first phase including issues relevant to the introduction of the Minimum Wage, such as the requirement for pay statements, the right not to be unfairly dismissed, advice and conciliation through the Jersey Advisory and Conciliation Service (JACS) and enforcement through an Employment Tribunal system.

The Employment (Jersey) Law 2003 was debated and adopted by the States in July 2003. Part 4 of the Law relates to Minimum Wage and subordinate legislation is required to enable this part of the Law to function. The Law has recently been approved by Privy Council and has been registered in the Royal Court, but the Regulations cannot be debated until there is an Appointed Day for the Law.

For practical business planning reasons, those sectors most likely to be affected by the Minimum Wage, particularly Hospitality and Agriculture, have been promised adequate lead time to allow them to incorporate the minimum wage rates into their new tariffs. This R.C. is intended to serve that purpose by being released at least one year before the anticipated introduction of the minimum wage. It is important for agreement to be reached on the rate as soon as possible so that the appropriate notice is given and employers can plan ahead with some certainty, not just for Minimum Wage but all other aspects covered under the Employment (Jersey) Law 2003 and the Employee Relations (Jersey) Law 200- (currently being drafted).

Summary of the Forum's recommendations

The Employment Forum has recently presented its report on Minimum Wage to the Employment and Social Security Committee and interested Committees, key industry representative and unions. The Report is attached in full.

The Forum makes the following main recommendations regarding the subordinate legislation necessary for the Minimum Wage –

- (a) An initial Minimum Wage rate of £5.08 for implementation in April 2005. This figure was derived by applying the expected uplift for inflation, to a notional figure of £4.80 as at October 2003. (For the same reason, other recommended figures are not 'round sums'.) The rate should be set at least 12 months in advance because a political promise has been made to industry to allow them time to prepare for the introduction of Minimum Wage.

The proposed rate should apply to all employees over school-leaving age, except when the trainee rate is

paid and 'special classes of person', as detailed in Articles 36 to 43 of the Employment (Jersey) Law 2003.

- (b) An offset of £74.20 per week for accommodation and food for implementation in April 2005. This amount represents a maximum offset against weekly pay for the purpose of establishing whether the Minimum Wage has been paid. Where only accommodation is provided, the offset should be £55.65 (75% of the combined accommodation and food rate).
- (c) An initial trainee rate of £3.82 for implementation in April 2005. The proposed trainee rate should apply to employees of any age who are undertaking an accredited training course and should be payable for a maximum of one year in a new job with a new employer, by written agreement. No recommendation was made regarding a separate youth rate.

Comment

The Employment and Social Security Committee is of the opinion that the Forum has recommended a prudent rate in the current economic climate, providing a balanced and objective package given the difficulties inherent in the introduction of a minimum wage system. In particular, the Forum has taken into consideration the specific circumstances of employers and employees within the two main industries that might be affected most by the introduction of a minimum wage, Agriculture and Hospitality.

The Forum's recommendations differ in one respect from the original Committee proposals that were presented in the Report 'Minimum Wage Legislation', (appended to the R.C.). The Forum has concluded that there should be two, rather than one, offset to the minimum wage rate to cover both accommodation and food. Originally, in order to keep the system simple, the then Committee proposed only one offset to cover accommodation, based on a level which existed at the time. It was thought that the definition of what constituted 'food' would be problematic and difficult to enforce.

At the time of the original report, it was also envisaged that there would be no need to set a youth rate. With a high stay-on rate in Education and good employment prospects, it was envisaged that the trainee rate would cover the situation adequately and encourage the employers of those leaving school earlier to train. The trainee rate proposed at the time was in line with the first year Apprenticeship rate. However, in light of the changing employment situation, the Committee would wish to receive views on this aspect.

The Employment Forum was divided on the issue: some believed that it would be discriminatory to pay a young person less for doing the same job as an adult; others thought that it might discourage employers from employing young people and that young people may be reluctant to take up an apprenticeship or trainee job at a lower rate. In practice, there are now very few apprenticeships available and the lower apprenticeship rate has never discouraged young people in the past. The main impact would be limited to relatively few young people who leave education before the age of 18 and those aged over 16 years doing parttime jobs whilst in education.

It is intended to implement the minimum wage system in April 2005, subject to the passage of relevant legislation and keeping to the original time of a one-year lead-in to allow employers time to adjust. Therefore the Committee invites any further comments to be presented to the Department by 13th February 2004, marked for the attention of the President.

**RECOMMENDATION OF THE
EMPLOYMENT FORUM
TO THE
EMPLOYMENT AND SOCIAL SECURITY COMMITTEE
ON THE ISSUE OF
MINIMUM WAGE**

This is the fourth Recommendation of the Employment Forum to the Employment and Social Security Committee (“the Committee”).

Previous recommendations of the Forum were –

1. Establishing an Enforcement Structure (May 2001)
2. Unfair Dismissal (December 2001)
3. Holiday Entitlement and Rest Days (April 2002)

Chairman's Foreword

This is the fourth recommendation of the Employment Forum and without doubt this has been the most difficult of the four areas we have had to look at to date.

The role of the Employment Forum is to consult with interested parties and to form a consensus view, while taking into account economic conditions and the original political objectives.

It is now some 10 years since the principle of a minimum wage in Jersey was lodged in the States by the then Senator Shenton. Since that time, the Island's economy and its political and social outlook has changed considerably, leading to justifiable questions as to the value and the objectives of the proposal to introduce the minimum wage.

Whilst there are few who disagree with the need for a minimum wage, it is at that point that agreement ceases. It has been extremely difficult to find a consensus view and even within the Forum, having undertaken all the research and heard all of the views, there have been some areas where we have not been able to reach a unanimous view.

The proposals that follow are the result of long hours of consultation and research. For some, the results will not be what they had originally wished for. We would, however, urge all parties reading this report to read the full justifications before reaching their own conclusions as to the desirability, or otherwise, of our recommendations.

Finally, as Chairman of the Forum, it just leaves me to thank all of those who contributed to our deliberations and, of course, the members of the Forum who have freely given their time and expertise to create the following recommendations.

*Richard Plaster
Chairman of the Employment Forum
October 2003.*

EXECUTIVE SUMMARY

Section 1 – THE HISTORY

The introduction of a minimum wage was first proposed in March 1993.

In 1996, the Industrial Relations Committee put a Report and Proposition to the States and subsequently the Employment and Social Security Committee took over responsibility for “Industrial Relations” in December of that year.

The Committee took a “Minimum Wage” Report and Proposition to the States in March 1999 (P.227/1998), following an impact study and consultation process. The States voted in favour of the introduction of a minimum wage policy and also the setting up of a consultative body known as the Employment Forum, which was established in August 1999 to consult on and monitor minimum wage. The Report and Proposition states that the principles of introducing a minimum wage are that a rate *‘should support a competitive economy; be set at a prudent level; be simple and straightforward; and yet make a difference to the low paid.’*

The Committee were advised that the Law would not be workable without the introduction of legislation giving protection to employees from unfair dismissal, so in December 2000, the Committee took an “Employment Legislation” report to the States for debate (P.99/2000). The Report recommended that the first phase should include legislation on issues relevant to the introduction of the Minimum Wage, including the requirement for pay statements and the right not be unfairly dismissed.

Part 4 of the Employment (Jersey) Law 2003 establishes a legislative framework for the operation of a Minimum Wage System in Jersey.

Section 2 – NATIONAL MINIMUM WAGE IN THE U.K.

The U.K. 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 they recommended a rate so high that jobs would be put at risk. So, they 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 U.K. has increased the minimum wage in significant jumps. Following the latest recommendations from the Low Pay Commission, the current rates are; Adult – £4.50, Development – £3.80 and Accommodation offset – £24.40 per week.

Section 3 – THE COMMITTEE’S PROPOSALS

In 1999, the States of Jersey agreed the following –

Minimum Wage – The Law will require that all workers in the Island are remunerated at an hourly rate which is equal to or greater than the minimum wage. The “standard” pay of workers will be used to ascertain whether the minimum wage rate has been satisfied. Premium payments such as overtime and shift pay will not count. Employers will be required to issue workers with a pay statement which sets out how their pay has been computed.

Offsets – The only deduction that could be made from an employee’s pay, which would count towards establishing whether the minimum rate has been satisfied, would be a charge in respect of tied accommodation.

Trainee rate – Employees on accredited training courses should be entitled to a trainee rate for a maximum period of one year when starting a new job with a new employer.

Youth Rate – A separate youth rate should not be introduced as, unlike the U.K., Jersey has a high proportion of

young people staying on in higher and further education and very low unemployment.

Employment Forum – The Forum should be established in Law with the purpose of reviewing the minimum wage.

SECTION 4 – THE RESEARCH AND CONSULTATION PROCESS

The consultation has been carried out in various stages –

1. Updating the Institute of Employment Studies research

The Committee commissioned an impact study to explore the potential impact of the introduction of a minimum wage, figures from which have been updated by IES and subsequently updated again by the Forum. The suggested figure of £3.70 for January 2000 has been updated by the Average Earnings Index, the Retail Price Index, the mean of increases in the Average Earnings and Retail Price Indices and in line with the U.K., to suggest minimum wage rates for 2004/5.

2. “Setting the Minimum Wage” consultation

The Employment Forum issued a questionnaire to consult on the level at which the minimum wage should be set, which closed in September 2002. The questionnaire also included questions on a trainee rate, benefits in kind and method of updating.

3. OXERA report

In 2002 the Policy and Resources Department asked OXERA to undertake research and prepare a paper on the economic implications of the level and structure of the Minimum Wage. OXERA provided recommendations on various issues relating to the introduction of a minimum wage in Jersey.

4. Update meetings

In September 2003, the Forum held individual discussions with representatives from the Jersey Farmers’ Union and the Jersey Hospitality Association. As it had been 9 months since the Forum’s consultation had been carried out, these 2 groups, plus the TGWU, who declined, were given the opportunity to provide an update.

5. Income Distribution Survey

In the majority of European countries, including the U.K., minimum wage rates are usually close to 50% of the median pay level. According to preliminary results from the Income Distribution Survey, 50% of the median equivalised, pre-benefit income for an adult living alone is £160 per week.

Section 5 – FORUM’S JUSTIFICATION

The Forum provides reasoning for their recommendations, taking into account all of the evidence received through the research and consultation process.

Although previously agreed in principle by the States, significant changes in the economic environment have caused the Forum to reassess the justification of setting a minimum wage and realise the necessity for continual reappraisal of the need, aims and structure of the minimum wage.

In addition to justifying the recommendations on the minimum wage rates, offsets, method of updating and other subordinate legislation required, there is also a discussion of the principles and potential benefits of a minimum wage in the current economic climate.

Section 6 – THE RECOMMENDATION

Minimum wage rate

The Forum proposes that the initial minimum wage rate should be £4.80, to be updated by 6% to £5.08, for

implementation in April 2005.

Offsets

The Forum recommends a total offset of £70 for accommodation and food, to be split 75% for accommodation and 25% for food. This amount should be uprated by 6% to £74.20, for implementation in April 2005.

Trainee rate

The Forum proposes that the initial trainee rate should be 75% of the recommended minimum wage rate, which equals £3.60. This would be uprated to £3.82, for implementation in April 2005.

Uprating the minimum wage

The Forum recommends that they should annually make a recommendation to the Committee following wide ranging consultation. The first review would therefore be completed by April 2006, unless there were significant changes in the employment environment that warranted an earlier review.

Other subordinate legislation

The Forum has provided recommendations on the subordinate legislation required to enable the minimum wage legislation to function effectively, including recommendations on the pay reference period, the method of calculating a worker's hourly rate and the requirement for employers to keep records.

Procedural guidelines

The Forum recommends that detailed guidelines should be provided to enable all parties to understand and comply with the requirements of the legislation.

RECOMMENDATION OF THE EMPLOYMENT FORUM ON THE ISSUE OF MINIMUM WAGE

Section 1 – THE HISTORY

- A proposal to introduce a minimum wage had originally been lodged by Senator Shenton in March 1993, but at that time the Finance and Economics Committee presented a report which stated that the need for a minimum wage had not been proven (P.199/93).
- The Industrial Relations Committee put forward their own report and proposition to the States in October 1996 (P.154/96). Comments were made on this report by three Committees; Employment and Social Security, Finance and Economics, and Policy and Resources, following which an amended proposition was lodged by Deputy Dorey (P.225/96).
- The Committee took over responsibility for “Industrial Relations” from the former Industrial Relations Committee in December 1996 (P.241/96).
- The Committee took account of the views that had been expressed by other Committees over the previous 5 years and commissioned an impact study to explore the possible effects of the introduction of a minimum wage, so that members could be fully informed before debating the matter. However, the research had only just started when the States debated an amendment by Senator Shenton. As a result of this amendment, the principle of the introduction of a minimum wage was approved. The Committee subsequently completed the impact study.
- The impact study was undertaken by the Institute for Employment Studies, who surveyed the views of 750 employers, covering a representative sample across different industries and company sizes. They also obtained the views of a number of bodies, including the Jersey Hospitality Association, the Jersey Farmers’ Union, the Institute of Directors, the Chamber of Commerce and the Transport and General Workers’ Union. Based on the IES study, the Committee carried out a general consultation and then specifically followed up with those most likely to be affected by the introduction of a minimum wage. The follow-up meetings showed that the majority of these groups were not optimistic about the impact of a minimum wage.
- In March 1999, the Committee took a Report and Proposition on “Minimum Wage” (P.227/98) to the States. This report resulted from the research that had been carried out during 1997 and 1998. During the debate, the States voted not only in favour of the introduction of a minimum wage policy, but also the setting up of a consultative body known as the Employment Forum.
- The Report and Proposition states that the principles of introducing a minimum wage are that a rate *‘should support a competitive economy; be set at a prudent level; be simple and straightforward; and yet make a difference to the low paid.’*
- In May 1999, the Committee submitted a Law Drafting brief on Minimum Wage to the Law Draftsman, who advised that the Law would not be workable without the introduction of legislation providing protection to employees from unfair dismissal. Without such protection any employee who brought a claim for non-payment of the minimum wage against his employer could be dismissed by that employer and would have no protection against such a dismissal.
- In August 1999 the Employment Forum was established, as had been recommended during the minimum wage debate. As well as consulting widely on the various issues raised in the Employment Legislation proposals, the remit of the Forum is to consult the minimum wage rates, to monitor the minimum wage and to report to the Committee with recommendations.
- In December 2000, the Committee took a Report and Proposition, “Employment Legislation” (P.99/2000) to the States for debate. The Report contained proposals for the way in which a framework of legislation

supported by the Jersey Advisory and Conciliation Service (JACS) and a Tribunal type enforcement body, might be introduced in the Island in two phases. The Committee recommended that the first phase should include legislation on issues essential to the introduction of a Minimum Wage, including the requirement for pay statements and unfair dismissal.

- The Employment (Jersey) Law 2003 (“the Law”) was drafted, based on the report and proposition, and was unanimously agreed by the States in July 2003. The Law was registered in the Royal Court on 5th December 2003. It is not yet known on what date the Law will be brought into force.

Section 2 – NATIONAL MINIMUM WAGE IN THE U.K.

Whilst it is recognised that there are many differences between Jersey and the U.K., it is felt that examining the impact in the U.K. can provide useful information when considering the introduction of a minimum wage system in Jersey.

The U.K. introduced a National Minimum Wage in April 1999, at an initial rate of £3.60. This was generally accepted to be a prudent level, balancing the desire to make a difference to the lower paid against the potential negative economic impact on industry. The Low Pay Commission were aware that low-paid workers would not be helped if they recommended a rate so high that jobs would be put at risk. So, they recommended that the Minimum Wage should be introduced at a cautious rate offering real benefits to the low paid, while avoiding unnecessary risks to businesses and to jobs.

Where to set the minimum wage without damaging the economy is a matter of judgement and it is not possible to accurately forecast the effect on the labour market due to other changes happening in the economy. Many jobs in the U.K. were already being paid around the initial level of the minimum wage that was recommended, but since assessing the economic impact, the rate has been significantly increased.

The Low Pay Commission was established to set new rates from time to time and to carry out research and continued consultation. To date they have issued 4 reports, the most recent having been published in March 2003.

Following the recommendations made in the Low Pay Commission’s Fourth Report, over a million of the lowest paid workers in the U.K. received a pay increase this year. The Government has also provisionally accepted the Commission’s recommendations that the rates should be further increased in October 2004, subject to further advice from the Commission in early 2004.

The Chairman of the Low Pay Commission, Adair Turner, said that *“the National Minimum Wage has benefited workers without damaging the economy or employment. We now want to build on its initial success, producing the maximum benefit for low-paid workers which can be achieved without damaging business and employment prospects. We have therefore recommended significant increases in minimum wage rates, above the forecast increase in average earnings.”*

The Low Pay Commission’s Fourth Report included the following recommendations –

Minimum Wage – The adult rate of the minimum wage should be increased to £4.50 in October 2003. The rate should be further increased to £4.85 in October 2004, subject to confirmation by the Commission in early 2004.

Development Rate – The Development Rate should be increased to £3.80 in October 2003 and, subject to confirmation nearer the time, to £4.10 in October 2004. These rates should apply to 18-20 year olds and to workers on the older workers' Development Rate.

Youth Rate – 21 yearolds should receive the adult rate of the National Minimum Wage and the age coverage of the youth Development Rate should be kept under review. This recommendation was not accepted, but the Government agreed to ask the Commission to produce a report on the introduction of a minimum wage rate for 16-17 year olds by February 2004.

Accommodation Offset – The level of the accommodation offset should be increased in line with increases in the adult rate, producing a rate of £24.40 per week in October 2003 and £26.25 per week in October 2004.

U.K. National Minimum Wage rate	Oct. 2002	Oct. 2003	Oct. 2004
Adult	£4.20	£4.50	£4.85
18-21 year-old/Development	£3.60	£3.80	£4.10
Accommodation offset	£22.75	£24.40	£26.25

Section 3 – THE COMMITTEE’S PROPOSALS

Based on the Minimum Wage Report and Proposition (P.227/1998), Part 4 of the Employment (Jersey) Law 2002 establishes a legislative framework for the operation of a Minimum Wage System. The minimum wage rate, trainee rate, and accommodation offset are intended to be specified in subordinate legislation.

3.1 Defining the Minimum Wage

The Law will require that all workers in the Island are remunerated at an hourly rate which is equal to or greater than the minimum wage. The intention was for all workers over school-leaving age to be entitled to the minimum wage, except voluntary workers and those undertaking work for therapeutic reasons.

Research has demonstrated that pay structures for the majority of workers are complex. Payment in kind, such as bonuses, accommodation, uniforms, meals and shift pay are common elements in many pay structures, especially for low-paid workers.

It was agreed by the States that only the “standard” pay of workers will be used to ascertain whether the minimum wage rate has been satisfied. The measure of pay will be established by taking account of the time worked, as defined under legislation, and the wage paid to an employee up to a maximum of one month.

Premium payments such as overtime and shift pay cannot be used to meet the minimum wage provisions.

The States agreed that the definition of a minimum wage should be simple and fair, easy to comply with and straightforward to enforce. It was decided, therefore, that workers’ pay based on productivity or performance should count towards the minimum wage, including for example, payment by results, commission, bonuses and tips and gratuities, paid through the payroll during the relevant pay period. This is in line with current practice for Social Security contributions and for taxation purposes.

Employers will be required to issue workers with a pay statement which records deductions from their wages and sets out how their pay has been computed. Should any worker reasonably believe that they are not receiving, or have not received, the appropriate rate, they can utilise a number of mechanisms to assert their statutory right, including taking the matter up with their employer and having a statutory right to access records which relate to their rate of remuneration. The matter can also be referred to the Jersey Advisory and Conciliation Service (JACS) who can conciliate and bring about a settlement, or the worker can refer the matter to the Employment Tribunal for determination.

3.2 Offsets

The States decided that accommodation would be the only benefit in kind to be taken into account in the calculation of a person’s wage and for which an offset should be allowed. The Committee’s Report and Proposition had taken into account the unique situation in Jersey with regard to accommodation and suggested a figure of £40 per week. It was recognised that this was considerably less than the amounts that had been suggested by the industries affected, but was thought to represent “*a realistic deduction rather than a market value.*”^[1]

3.3 Training and Development

The acquisition of skills remains a priority for workers of all ages, especially those moving into a new sector or returning to work. A new employee who brings no prior knowledge or experience to an employer needs time to be developed and initially they may not contribute fully to the workforce.

Bearing this in mind, the States agreed that a statutory minimum wage should not become a barrier to the receipt of structured training or taking on an inexperienced worker. To achieve this and to provide an incentive for employers to train their employees, it was agreed that those on accredited training programmes and courses should be entitled to a “trainee rate” for a maximum period of one year. This provision will only relate to employees who start a new job with a new employer; after one year of employment employees will become entitled to the statutory minimum wage. Accredited training courses were intended to be prescribed by regulations after consultation with relevant parties.

3.4 Youth Rate

Unlike the U.K., Jersey has a high proportion of young people staying on in higher and further education and very low unemployment. It was therefore decided by the States that a separate youth rate should not be introduced at that time.

3.5 Reviewing and updating the Minimum Wage

The States agreed that an independent body should be established to make recommendations to the Committee on minimum wage, including a mechanism for updating. The Committee would then be required to make a recommendation to the States on any new rates and justify the reasoning for its proposals.

SECTION 4 – THE RESEARCH AND CONSULTATION PROCESS

The consultation was carried out in various stages, including studies commissioned by the Employment and Social Security Committee and by other States Committees which were utilised by the Forum, and research carried out by the Forum itself –

- 4.1 Updating the Institute of Employment Studies (IES) research
- 4.2 “Setting the Minimum Wage” consultation
- 4.3 OXERA report
- 4.4 Update meetings
- 4.5 Income Distribution Survey

4.1 Updating the Institute of Employment Studies research

The Institute of Employment Studies research was commissioned by the Employment and Social Security Committee and results were fed into the Committee’s Minimum Wage Report and Proposition.

The Report and Proposition suggested £3.70 as an appropriate rate to be effective from 1st January 2000, on the basis of data that had been collected in September 1997. In recommending £3.70, the Committee took the following considerations into account from the 1998 IES report^[2],

- *“the majority of employers with low paid staff deemed £3.50 to £4.00 acceptable*
- *of those employers who felt they would be harmed by a minimum wage the peak is around £3.50, although the majority of these accepted £3.50 – £4.00 as possibly acceptable*
- *59% in the relatively low paying agricultural sector considered £3.50 acceptable, compared with 31% at £4.50*

- *in hotels and catering and the retail sectors, the positive balance peaks at £4.00*
- *450 jobs could have been lost, according to employers, had the minimum wage been introduced in 1998 at more than £4.00”.*

The economic environment has since altered, so in August 2001 the Employment Forum commissioned IES to update their study on Minimum Wage levels. Calculations were carried out by IES, taking as a starting point the recommended Minimum Wage rate of £3.70, to suggest a figure which could take effect from September 2002. These have been updated again by the Forum, using the same methods as IES, to suggest rates for implementation in 2004 and 2005, as follows; (see Annex 1 for the full table of upratings).

1: Based on June 2002/3 data from the Jersey Average Earnings Index- £4.95 with effect from September 2004 or £5.18 with effect from September 2005.

2: Based on June 2002/3 data from the Jersey Retail Price Index – £4.47, with effect from September 2004 or £4.66 with effect from September 2005.

3: Taking a mean of increases in the Jersey Average Earnings and Retail Price Indices for 2002/3 – £4.71 with effect from September 2004 or £4.91 with effect from September 2005.

4: Uprating by the same percentage as the U.K. each year would produce a rate of £4.31 with effect from September 2004 and £4.62 with effect from September 2005.

Whilst the suggestions made by IES are useful in setting an appropriate rate, it must be remembered that the review has not accounted for other economic or social change within the Island and further consideration is necessary to reach appropriate rates for April 2005.

4.2 “Setting the Minimum Wage” consultation

The Forum issued a consultation document and questionnaire which were based on the Committee’s proposals for the minimum wage framework that had been agreed by the States. The document followed from wide-ranging consultation, including public meetings, which aimed to provide a discussion forum for people with differing perspectives. Professor Brown, a member of the Low Pay Commission in the U.K., gave presentations at the public meetings, outlining his experience in implementing the National Minimum Wage, the resulting impact within industries and the affect on the workforce.

The Forum’s consultation questionnaire closed in September 2002, after which, analysis was carried out to establish whether there was consensus regarding the Committee’s broad proposals, a summary of which is below. Charts showing the full results are at Annex 2.

Respondents provided the following information regarding their position and sector –

- 63% employer, 15% union, 8% employers association, 15% other.
- 13% public sector, 13% hospitality, 10% social services, 10% service industries, 7% agriculture, 7% distribution, 3% finance, 23% other^[3].

Responses to whether the following aspects should be included in the minimum wage system were –

- A youth rate - 32% yes, 59% no.
- Accommodation offset – 53% yes, 37% no.
- Benefits in kind, other than accommodation – 32% yes, 64% no.

Responses regarding minimum wage rates^[4] –

- The most frequent response when asked what hourly rate the minimum wage should be set at was £4.50, stated by 20% of respondents. The second most frequent response was £5.00 stated by 17% of respondents.
- Recoded into ranges, 37% of respondents said the minimum wage should be between £4.00 and £4.50 and 27% said between £4.51 and £5.00.
- The most frequent response to the question of what rate the trainee rate should be set at was £4.06, stated by 13% of respondents. A further 10% said £4.50 and 10% said £5.00.
- The weekly amount considered to be a fair off set for accommodation was £22.75 by 10% of respondents and £50 by 10% of respondents.

Uprating

The following three options for uprating were proposed in the Forum’s consultation paper –

Option A – The Forum would make a recommendation to the Employment and Social Security Committee, on an annual basis, having first consulted with employers, workers, trade unions, staff associations, employer associations and any other body as they see fit.

In considering their recommendation, the Forum would also be required to have regard to the effect any revised figure would have on the economy of the Island as a whole and on business competitiveness.

This option would not necessarily provide for annual uprating of the minimum wage but would enable the prevailing economic circumstances to be accounted for and allow interested parties to put forward their views. This approach would also allow for uprating at irregular intervals that are best suited to the economic position of the Island at the time.

Option B – Prescribe in legislation a formula which ensures that the minimum wage rates and offset are uprated at a predetermined time each year. There are a number of multipliers which could be utilised to uprate the figures. For example, the Average Earnings Index, Retail Price Index, or a combination of the two.

Whilst this method may provide for a more “scientific” approach to annual uprating it would probably not increase the minimum wage greatly each year and in practical terms may not have a major impact on the wage packets of those earning at minimum wage levels. An increase at an inappropriate time could also have a detrimental effect on the wider economy and community as a whole. In addition, it is recognised that using the Average Earnings Index or the Retail Price Index might result in some limitations being incorporated into legislation.

Some of the limitations of the Average Earnings Index are that it only records cash earnings and not benefits in kind, it does not include bonuses if they haven’t been consolidated into pay, but it does include overtime.

The Retail Price Index is not limited in the same ways as the Average Earnings Index. It provides a good indication of changes in the cost of the “basket of goods” and services purchased by the average household, but does not reflect the fact that the average household becomes richer in real terms over time and so buys a bigger basket.

Option C – A prescribed formula and a recommendation made by the Forum on a three yearly cycle, which reviews the minimum wage rates each year using a combination of Options A and B.

For the first 2 years following the introduction of the minimum wage, a formula could be employed to uprate annually. Just before the end of the third year after the introduction of the minimum wage, the Employment Forum would consult with employers, workers, trade unions, staff associations and employer associations to assist in the development of a recommendation which would be put before the States to determine new rates. It is felt

that this option would reduce the impact of the weaknesses discussed in options A and B.

The preferred method for adjusting the minimum wage rate, with 43% in favour, was Option A and 30% of respondents chose Option C.

4.3 OXERA report

In 2002 the Policy and Resources Department commissioned OXERA to undertake some research and prepare a paper on the economic implications of the level and structure of the Minimum Wage. The report states that the main reasons for introducing a minimum wage are to achieve greater income equality and to alleviate poverty, and points out that the benefits from minimum wage are limited to those in employment and therefore excludes those who are not working.

Various recommendations were made on a minimum wage system for Jersey, including –

- The results of the OXERA model of the Jersey economy and studies of the effects of minimum wage in other countries indicate that, provided the level of the minimum wage is set conservatively, the overall impact should be small.
- It is likely to be simpler and less costly to introduce a lower minimum wage rate on age grounds alone because many employers may classify younger, lower skilled workers as trainees in order to be able to pay them the lower rate. Restricting the lower rate to genuine trainees would be expensive for the States to enforce.
- There is strong evidence from other jurisdictions that the negative economic effects of the minimum wage are felt particularly among the young and OXERA strongly recommend putting a lower rate in place for young people.

The absence of a youth rate could be potentially damaging to the long term employment prospects of young people. *“Whatever the causes of youth unemployment, one of the main justifications of providing a lower minimum wage for young workers, aside from the desire to minimise the negative employment effects, is that young low-earning workers are often employed in low-paying jobs only on a temporary basis. Young workers often use such low-paying jobs as a ‘stepping-stone’ to higher paid employment. Therefore, the reduction in the availability of employment for younger workers could have negative effects on the ability of potential younger workers to gain employment and skills over the long term.”*

- Some variation should be allowed in the offsets to reflect industry variations in the standard of benefits in kind that are provided. OXERA recommend that the best option would be a flat rate, collectively agreed on an industry wide basis, as this is already common practice and makes provision for the possibility that the type and standard of accommodation varies in different industries.
- OXERA’s conclusions on the most appropriate method of uprating were that *“given the present relatively high rate of inflation in Jersey and the high rate of wage increases, a policy of linking the minimum wage to either the Retail Price Index or (especially) the Average Earnings Index would tend to erode the competitiveness of Agriculture and Tourism still further.”*^[5]
- OXERA also comment on the likely effect of minimum wage on taxation. *“Because of the way in which the personal taxation and contributions system works, specifically the high levels of exemptions and allowances, it is unlikely that there would be much of an increase in personal income tax revenues.”*

Based on the IES employers’ telephone survey (1998) and the Manpower survey (1997), OXERA have provided indicative figures showing the percentage of low earning employees, broken down by occupation group and wage band. It has been estimated that £4.25 – 4.96 is an equivalent 2003 wage band for the 1997 wage band of £3.00 – 3.50. According to the OXERA report^[6], within each occupation group, the percentage of employees likely to be

earning less than £4.96 per hour are –

- 32% of the agriculture industry
- 28% of the hospitality industry
- 7% of the retail industry
- 1% of the domestic industry
- 2% in ‘other’ industries^[7]

4.4 Update meetings

In September 2003, the Forum held individual discussions with representatives from the Jersey Farmers’ Union and the Jersey Hospitality Association. As it had been 9 months since the consultation was carried out, they were given the opportunity to provide an update. The Transport and General Workers’ Union were also invited to provide an update but declined as they felt there was nothing to add to their previously submitted response to the consultation, which had already been included in the results.

The Forum had agreed that workers and employers in Agriculture and Hospitality would be the most affected by the introduction of minimum wage. The OXERA report also suggests that these industries will be disproportionately affected as they are predominantly export oriented and are subject to international competition. The other main employer of low earners, the services industry, can increase their prices without reducing demand as they mainly cater to on-Island demand.

Particularly affected within the agriculture and hospitality sectors will be the non-resident imported labour who are mainly on seasonal contracts. Local employers need to ensure that people will still want to come to work in Jersey, particularly those who have the skills to support the agriculture and hospitality industries.

The provision of benefits in kind is most common among employers with employees earning less than £4.00 per hour. In terms of sector, non-financial benefits are most common in agriculture and hotels and catering, the intention being to make these jobs more attractive in the absence of the higher pay offered in other industries.

According to the Manpower Survey, the total workforce in Jersey in December 2002 was 50,350, including full time and part time workers. 8.8% worked in hotel, restaurant and bar jobs and 3.3% in agricultural and fishing jobs.

Hospitality

Only a very small proportion of businesses in the hospitality industry are not part of the JHA. To be a member of the JHA, businesses must agree to the rules negotiated with the TGWU. In 2002, 185 out of 190 businesses were part of the JHA.

Pay rates were uprated by 6% to £4.50 from October 2003. Rates are set in July or August for the following year. Industries in Jersey, particularly Hospitality, have been raising their pay rates over the past few years in anticipation of the introduction of minimum wage.

According to the IES survey, 48% of hospitality employers provide free accommodation and 79% provide free meals. The JHA recommends that there should be provision for a food offset because meals are a valuable benefit to hospitality staff, especially those working extended hours. If not, “*it is possible that, depending on the rate set for the Minimum Wage, employers may have to charge staff for meals whilst on or off duty.*”^[8]

A British Hospitality Association study in the U.K. recently suggested that the true value of the accommodation and food provided in this industry is £77.02 per week. As of October 2003, the Jersey Hospitality Association rate for board and lodgings is £57. The JHA recommends this as a minimum offset against a minimum wage rate of £4.50.

The JHA recommends the introduction of both youth and trainee rates, the trainee rate to be lower than youth rate. The JHA consider this to be essential because so many young people work in the hospitality sector, but there is not currently a separate pay rate for young people in the hospitality sector and there are unlikely to be as many young people working in hospitality in Jersey as there are in the U.K. The JHA also suggest that the minimum wage should not apply to anyone under the age of 18, but the Employment Law states that anyone over school-leaving age is entitled to receive at least the minimum wage.

With regard to uprating the minimum wage, the JHA supported Option A– that recommendations should be made to the Committee intermittently, following consultation with industry. The JHA felt that automatic uprating of the minimum wage in line with any indices could potentially affect the economy of the Island and the competitiveness of businesses. The economic position of the Island should be taken into account in any uprating, including the forward planning needs of the hospitality sector.

Agriculture

At least 90% of the agricultural industry are members of the Farmers' Union, which obliges them to pay employees the rates agreed by the Farmers' Union, although the same rates are also usually paid even in non-union businesses. Annual pay increases are typically a minimum of cost of living.

Current basic pay rates for regular and seasonal workers in agriculture are £3.73 for workers carrying out all duties and £3.68 for workers carrying out most, but not all, agricultural duties. A normal working week is 41 hours and the average overtime worked is 12.5 hours, which is paid at time and a quarter.

According to the IES survey, 100% of employers in the Agriculture industry provide free accommodation and 29% provide free meals.^[9]

The JFU felt that neither a training rate nor a youth rate would be relevant in the agriculture industry as workers are not usually under 18 and, although there are currently 2 lower rates for 16 and 17 year old workers (£2.73 and £3.01), the JFU conditions of employment state that juvenile workers who carry out full adult work continuously should be paid the appropriate adult wage.

The JFU were concerned about the possibility of uprating the minimum wage in line with inflation, as trying to keep up with high local inflation has caused problems for this industry in the past. They suggested that uprating minimum wage rates in line with U.K. inflation would be more appropriate, as this would put them in a better position regarding exports, particularly those agricultural companies involved with produce growing.

Transport and General Workers' Union

The TGWU did not attend an update meeting with the Forum, but their written response, received in October 2002, supported a minimum wage of £6.00 per hour. This was based on their experience of negotiations with employers at the time, having set a minimum wage for the lowest paid workers in the States of Jersey at £7.94 per hour and £6.50 – 7.00 in the private sector.

The TGWU did not support the introduction of a trainee or youth rate. A youth rate was considered discriminatory and counterproductive to business. It was stated that the full adult rate should be payable at the age of 18, but 16 and 17 year olds are covered by the minimum wage provisions in the law and the TGWU have not recommended a rate for these workers.

On the issue of accommodation, a specific rate was not suggested by the TGWU, but it was suggested that it should be equitable and transparent and the practice of charging towards accommodation based on overtime working should be addressed.

4.5 Income Distribution Survey

The Income Distribution Survey was commissioned by 3 Committees: Employment and Social Security, Finance

and Economics and Policy and Resources. The research was undertaken in mid 2002 by Business Development Research Consultants Ltd (BDRC).

In the majority of European countries, minimum wage rates are usually close to 50% of the median pay level. In Jersey, according to preliminary results from the Income Distribution Survey, percentages of the median equivalised, pre-benefit income for an adult living alone, before housing costs, are as follows –

50% = £160

60% = £192

70% = £223

Taking the minimum wage rate recommended by the Forum – £4.80 as a percentage of the median (assuming a 41.5 hour week, which is the mean of agriculture and hospitality industries standard working hours), a worker would receive £199.20 per week, which equals 62% of the median income referred to above.

Some examples of minimum wage as a percentage of median pay in other countries, from the Federation of European Employers, are –

- Poland 40%
- U.K. 45%
- France 47 – 49%
- Portugal 55%
- Ireland 63%
- Malta 73%

Section 5 – FORUM’S JUSTIFICATION

This section provides the reasoning behind the Forum’s recommendations, taking into account the evidence received through the research and consultation process.

The need for a minimum wage

Although the introduction of a minimum wage has been agreed in principle by the States in order to provide minimum standards, the Forum feels that there have been significant changes in the economic environment since the original research was carried out, warranting a reassessment of some aspects of the proposed minimum wage system.

The Forum is particularly concerned about the lack of clear political objectives to which any minimum wage recommendation can be compared. There is little doubt that a minimum wage will create a burden on employers. For this burden to be justified there should be a clear indication of the advantages to the employee linked to the political objectives for setting the minimum wage. The absence of such objectives creates difficulties when making such a recommendation.

The Forum has also had to be aware of the changes that have been seen in the Island’s economy since the original proposals were lodged in 1993. These changes should lead to a continual reappraisal of the need, aims and structure of the minimum wage. For instance, as discussed later in this section, there are many who would consider the introduction of a youth rate to be more pertinent in the current economic climate than it had been in previous years.

The Forum has also been mindful of one of the primary objectives which has been enshrined in the shortly to be enacted Employment Law; that the Forum should consider the economic impact of these proposals. This factor in itself constrains the recommendations that can be made by the Forum.

The principles of minimum wage

The Report and Proposition states that the principles of introducing a minimum wage are that a rate *‘should 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 is to provide a package that takes account of business realities but removes the worst cases of exploitation.

The intention is 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.

Contrary to OXERA’s assertion that the main reasons for introducing a minimum wage are to achieve greater income equality and to alleviate poverty, the Committee’s aim was to provide *“decent pay for a fair day’s work”*^[10] and not to alleviate poverty. Only about half of the population of Jersey work, the other half cannot work, such as children, pensioners and people with incapacitating disabilities. The Committee is developing an income support system to help those who are in need.

The first report of the Low Pay Commission on Minimum Wage^[11] suggested a number of potential benefits of introducing a minimum wage, including –

- Reducing ‘in work poverty’ – Initial results from the Income Distribution survey indicate that 10% of the working households in the sample fell below the low income threshold (before housing costs).
- Reducing inequalities of income in the working population – fairness.
- Removing the worst cases of exploitation – decency.
- Equality of opportunities between sexes and ethnic backgrounds.
- Encouraging investment in training, therefore benefiting the organisation.

The IES survey revealed that two-thirds of employers thought that introducing a minimum wage would be a positive step. Most in favour thought there were good social reasons for introducing a minimum wage and objections were only raised by those who thought they would be damaged by it.

5.1 The minimum wage rate

Various minimum wage rates were suggested during a lengthy consultation process. The Forum considered a number of options, including a minimum wage rate of £4.50 with a £57 offset for food and accommodation. On reflection, 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.

Taking guidance from the views of the Low Pay Commission in the early days of developing the U.K. minimum wage, the Forum were 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.

As was the case with the initial rate set in the U.K., many jobs are currently paid around the level of the minimum wage recommended by the Forum, particularly in the Hospitality and Agriculture industries. Since assessing the

economic impact, the U.K. rate has increased in big jumps. Other changes occurring in the local economy, such as changes to the taxation of benefits in kind, will affect the impact of the Forum's recommendations.

5.2 Offsets

The Forum is aware that many employers in the Island incur costs which make up general remuneration packages of employees, other than payment in cash and the direct value of accommodation. Food, transport, heating and lighting of accommodation can contribute to the total remuneration package of an employee.

In their latest report, the Low Pay Commission stated that the accommodation offset "*should not be intended to reflect either the commercial value of the property or the cost to the employer of providing accommodation. On the other hand, it is reasonable to have a mechanism which reflects, at least partially, the costs to the employer and the benefits to the worker.*" [\[12\]](#)

According to the IES survey, 36% of employers with low paid employees include benefits in kind as payment. A higher minimum wage rate has been selected to protect those workers who are not provided with accommodation or other benefits in kind.

In the U.K., accommodation is the only benefit in kind that counts when determining whether the appropriate minimum wage rate has been paid. An offset for food was originally excluded from the proposed Jersey minimum wage system, but due to standard practices in the different industries, on a majority vote the Forum agreed to recommend a split for 2 benefits in kind; 75% for accommodation and 25% for food. If an employer does not provide food, just the offset for accommodation can be applied.

The purpose of specifying an offset is to provide a maximum amount that may be offset against weekly pay for the purpose of establishing whether the minimum wage has been paid. It does not provide a maximum amount that employers can charge for accommodation in circumstances where payment of the minimum wage is not in question. If an employee is paid a higher hourly rate, a higher rate can be charged for accommodation, as long as the employee is receiving at least the minimum wage when the maximum offset is applied.

As discussed in Section 4.3, OXERA recommended that some variation should be allowed in the offsets to reflect industry variations in the standard of benefits in kind that are provided. But, Article 16(7)(b) of the Employment Law states that different sectors of employment and persons of different occupations must not be treated differently in relation to determining the hourly rate of remuneration for the purpose of minimum wage. The Forum suggests that allowing an offset for food would help alleviate this problem.

An offset for food would be very unlikely to make any difference to employees' tax bills, as the Income Tax Department have suggested £25 as a reasonable allowance for one day's food as a benefit in kind.

Currently, there are 2 industries in the Island that routinely provide accommodation for their staff, Hospitality and Agriculture, who normally adhere to minimum standards which are negotiated, determined and communicated by their respective associations, the JHA and the JFU. The JFU provides staff accommodation guidelines, stating that the employer will provide adequate accommodation conforming to the 'Staff Accommodation and Lodging Houses Standards Code of Practice' (approved by the States October 1991). The recommendation of this rate of offset for accommodation is based on the assumption that industry standards will be adhered to in the provision of decent accommodation.

Under the terms of an agreement between the Jersey Hospitality Association and the Transport and General Workers Union, where board and lodgings are provided for an employee in the Hospitality industry, the maximum sum of £57 per week can be deducted from an employee's wage.

99-100% of workers in the agriculture sector 'live in', so they operate a different system where on the rare occasions when a worker lives out, a higher rate of approximately £1.07 extra per hour is payable.

The standard working week recognised within this industry is 41 hours, which means that those living out could

expect to receive at least an additional £43.87 per week. However, due to the nature of the work within the sector, the number of hours worked can vary greatly. The average number of hours worked is estimated to be 53.5 per week, therefore the extra cash paid to individuals living out is often £57.25 or more per week.

Research carried out by the Forum has also highlighted the fact that the range, quality and type of accommodation available to employees can differ greatly. Some employees will have shared accommodation, whilst others may be provided with self-contained one, two or three-bedroom units. Often the type of accommodation provided by an employer will depend on the position an employee has within a particular organisation. For example, a long-serving member of staff in a managerial position might be provided with lodgings which provide for their family also. As the accommodation available differs so much, the Forum considered whether different types of accommodation should attract different levels of offset.

The Forum agreed that this aspect of the scheme should be simple and straightforward to enforce. A complex system would create an administrative burden, requiring the establishment of an independent body to inspect and grade accommodation types and an appeals system to resolve any disputes. Tied accommodation does not afford the same security of tenure as privately leased accommodation and workers have a greater regard for cash in their wage packets than they do for better quality lodgings, particularly seasonal workers. Staff discontent is likely to arise if net take-home pay differs by virtue of the quality of accommodation they are provided with. It therefore appears that a complex system would result in additional costs being incurred across public and private organisations and an increase in bureaucratic intervention.

5.3 Trainee rate or Youth rate

The Forum examined the U.K.'s 'Development rate' and the requirements in the Isle of Man Minimum Wage Guidelines for establishing whether an employee's training is sufficient for them to be entitled to the lower rate of pay.

In the U.K., the Older Worker's Development Rate applies to workers over the age of 22 who are starting a new job with a new employer and undertaking accredited training on at least 26 days during the first 6 months of employment. The Minimum Wage Regulations contain a long list of what qualifies as accredited training. According to a survey carried out by the LPC recently, only 5% of employers were using this rate, but there might be a higher take-up in Jersey for a development or training rate as it would apply to all workers over school leaving age.

The Low Pay Commission recognises the argument that their age-related Development Rate lacks equity, but they believe that young people are vulnerable in the labour market and merit special consideration.

Similarly to the U.K., the Isle of Man has quite a complex system to justify paying the training rate, but their rate applies to workers aged 18 and over.

It is difficult to define what a 'trainee' is, many employers would be likely to classify younger workers as trainees to justify paying them the lower rate, unless there were strict rules on what can be classed as a trainee. As discussed in section 4.3, enforcing such rules to ensure only 'genuine' trainees were paid at that rate could be expensive and difficult to enforce.

OXERA have suggested that not having a youth rate could be potentially damaging to the long term employment prospects of young people. The IES research showed that in general, trainees were younger than most low-paid employees, with an average age of 19.64% of low-paid employees under age 18 were trainees.

Many retailers pay lower rates for younger workers, for example, one local chain of supermarkets pay £3.80-£4.20 per hour, depending on age and length of service, for part-timers such as Saturday staff, aged 16 to 18. If some evenings are also worked, £4.50 per hour may be paid.

Local employment patterns for young people have changed, therefore reassessment of the situation is necessary. Based on a majority decision, the Forum do not recommend a youth rate at this time, but it is thought that there may be a need in future if young people increasingly experience difficulty entering the labour market due to the

shortage of jobs.

5.4 Reviewing and uprating the minimum wage

The Forum considers that the most appropriate method of uprating the minimum wage is Option A– to make an annual recommendation to Committee following a wide ranging consultation process. This is a similar method to the U.K., where the Government periodically uprates based on recommendations from the Low Pay Commission following wide consultation. The majority of respondents to the Forum’s consultation were in favour of this method (43%) and in the update meeting the JHA clearly supported this method of uprating.

In their report OXERA stated that “*given the present relatively high rate of inflation in Jersey and the high rate of wage increases, a policy of linking the minimum wage to either the Retail Price Index or (especially) the Average Earnings Index would tend to erode the competitiveness of Agriculture and Tourism still further.*”

Other jurisdictions also operate similar methods of uprating. Australia, for example, has an independent body that is responsible for setting minimum wage rates. Reviews usually, but not always, happen each year and take into consideration economic factors and the needs of the low paid. Ireland also does not have an automatic method for uprating the minimum wage.

The JFU raised the question of how a minimum wage rate will be set in advance if it is not uprated against a fixed mechanism. The Forum are mindful that if rates were to be increased, good advance notice would need to be given to allow industries time to set their rates.

The Forum has recommended rates for October 2003 and has also recommended an uprating figure of 6% to provide the rates to be implemented in April 2005. The uprating figure of 6% was reached by estimating inflation as 4% per year, increased by half to cover the 18 month period until implementation.

5.5 Other subordinate legislation required

The Forum has also been asked to make recommendations on the following Articles of the Employment Law, where subordinate legislation is required to enable the minimum wage system to function effectively.

Article 16(4) enables the Committee to make an Order which prescribes a “pay reference period” as an averaging period, for the purpose of calculating whether the minimum wage has been paid over a period of time. The minimum wage does not have to be paid for each hour worked, but must be paid on average for the time worked in the pay reference period.

The Forum recommends a maximum pay reference period of one calendar month. One month is considered long enough to capture most fluctuations in earnings, especially given the likelihood of high turnover and seasonal work, particularly in lower paying industries. As with current practice in the U.K., the pay reference period would be the same as the worker’s pay interval if less than one month, for example, one day or one week.

Article 17 enables the States to make Regulations specifying the method of calculation of an employee’s hourly rate of pay, so as to compare it with the minimum hourly wage rate. There do not appear to have been problems in the U.K. with the simple method they employ and no specific problems can be foreseen for Jersey with this method. The Forum therefore suggests using the same method, which includes the following steps –

- Calculate minimum wage pay for the pay reference period by checking gross pay and making deductions for anything that does not count towards minimum wage pay and adding the accommodation offset if applicable.
- Calculate the hours for which the minimum wage must be paid in the pay reference period by identifying the kind of work that has been done, e.g. salaried hours, output work, time work.
- Divide the first figure by the second figure to obtain the worker’s hourly rate of pay for comparison with

the minimum wage.

- Compare the worker's hourly rate with the appropriate minimum wage rate, i.e. full rate or trainee rate.

Article 22 enables the Committee to make Orders determining how employers' records must be kept and for how long, for the purpose of establishing whether their workers have been paid at least the minimum wage.

In Jersey Law, there is a 10 year period before a contractual claim is out of time. The Forum is therefore concerned that if a period less than 10 years were recommended (i.e. 6 years as in the U.K. and in Jersey's Social Security Law) an employer could be in a situation where they have retained records for the statutory period but have no defence if a claim is made after that time. Regrettably therefore, the Forum recommends a 10 year period to tie in with breach of contract claims.

The Forum also recommends that for those employees above a salary threshold, employers do not need to keep such detailed records. General pay records kept for tax or social security purposes will probably suffice. The threshold over which detailed records would not have to be kept depends on the level of minimum wage, and might need to be updated at the same time as the minimum wage. The Forum believes that this will reduce the amount of records required to be kept, especially for those employers whose employees are paid significantly above the minimum wage. In the U.K., for workers earning less than £12,000 per year the records must be more detailed.

The system in the U.K. allows flexibility by not stating in the rules what counts as 'sufficient' records, as situations will vary. It is left to the judgement of the employer who must be aware that, if there is a dispute, the burden is on them to prove that the minimum wage has been paid. Further guidance should be given in procedural guidelines on the minimum wage, including examples of records that may count as sufficient, such as, gross pay, hours worked, deductions or payments for accommodation, tips paid through the payroll, holidays and absences.

Article 33(6) enables the Committee to make an Order which prescribes the maximum amount of compensation for a breach of Articles 31 and 32, that is, "detrimental treatment" by reason of minimum wage rights, rather than breaches of the minimum wage provisions themselves. In the U.K. there is no specified limit on compensation; the tribunal simply awards what it considers just and equitable. An upper limit applies only where the detriment consists of a dismissal or a termination of the contract and in those cases, the normal unfair dismissal limit applies.

The Forum considers that a limit on compensation is not necessary at this time, although a limit could be provided in subordinate legislation in future if it were considered appropriate. The maximum amount of compensation available for detrimental treatment by reason of minimum wage rights would therefore be subject to the maximum total sum that the Tribunal can award.

5.6 PROCEDURAL GUIDELINES

The Forum recommends that simple, easy to follow, detailed guidelines be developed to provide guidance on best practice and give clear examples to assist all parties in applying the Law and complying with its requirements. Complex procedures should not be incorporated into the legislation.

Reliable detail is required, as an employer may genuinely believe that they are complying with the requirements of minimum wage, but face a claim years later due to misunderstanding of the provisions.

This information could be provided in an employer's handbook issued by the Employment and Social Security Department, in JACS guidelines or in Codes of practice issued by the Committee. Detailed guidance could be included on how the minimum wage provisions relate, for instance, to the following issues –

- Rolled-up pay, premium rates in place of annual leave.
- On-call hours, sleeping at place of work (e.g. night watchman, doctors).

- Therapeutic work, supported employment schemes.

Section 6 – THE RECOMMENDATION

The recommendation is in 7 parts –

- 6.1 Minimum wage rate
- 6.2 Offsets
- 6.3 Trainee rate
- 6.4 Uprating the minimum wage
- 6.5 Other subordinate legislation
- 6.6 Procedural guidelines
- 6.7 Conclusion

6.1 MINIMUM WAGE RATE

The Forum proposes that the initial rate of minimum wage should be £4.80, to be uprated by 6% to £5.08, for implementation in April 2005.

The rate should be set 18 months in advance because a political promise has been made to industry to give 12-18 months to allow them to prepare for the introduction of minimum wage. The rate will have to be reviewed if the interval between the presentation of the Forum's recommendation and the implementation of the minimum wage rate is longer than 18 months.

Except when the trainee rate is paid (detailed at 6.2) and 'special classes of person', as detailed in Articles 36 to 43 of the Employment Law, the proposed minimum wage rate should apply to all employees over school leaving age.

Under no circumstances must any calculation of minimum wage entitlement result in an employee or worker receiving less than the value of the statutory minimum wage (or trainee wage if appropriate).

6.2 OFFSETS

The Forum are aware that the intention was to have only one offset for accommodation and that to recommend 2 separate rates is opposed to the Committee's 1998 recommendation that had been agreed by the States. But the Forum believes that there are potentially serious consequences if there is only one offset.

The Forum recommends a total maximum offset of £70 per week for food and accommodation, this figure to be uprated by 6% to £74.20 to be effective in April 2005. This amount represents a maximum offset against weekly pay for the purpose of establishing whether the minimum wage has been paid.

It is recommended that, when only one or the other benefit is provided, the £74.20 be split 75% for accommodation and 25% for food. This gives offsets of £55.65 for accommodation and £18.55 for food, to be implemented in April 2005.

6.3 TRAINEE RATE

On a majority vote, the Forum recommends a trainee rate. It is proposed that the initial rate of minimum wage for trainees should be £3.60, which is 75% of the minimum wage rate. This would be uprated by 6% to £3.82 for implementation in April 2005.

The proposed trainee rate should apply to employees of any age who are undertaking an accredited training course and should be payable for a maximum of one year in a new job with a new employer, by written agreement.

Inexperience at doing the job should not be justification for paying the trainee rate. If there was a dispute over hourly rate of pay, it would be up to JACS or the Tribunal to determine whether the training is “accredited”.

A Code of practice should be produced detailing what qualifies as “accredited training” to allow flexibility to change in line with training schemes in Jersey. It should include, for instance, the following requirements –

- Must be a locally or nationally recognised and certified qualification.
- Training must be undertaken on at least 30 days during the year (not necessarily full days).
- There must be a formal qualification at the end of the training.
- Training can be at or away from the workplace, but must be during normal working hours.
- There must be some supervision of the training.

Based on a majority decision, the Forum is not providing a recommendation on a Youth rate at this time.

6.4 UPDATING THE MINIMUM WAGE

It is recommended that the Forum will annually make a recommendation to the Committee following wide ranging consultation. The first review would therefore be completed by April 2006, unless there were significant changes in the employment environment that warranted an earlier review.

6.5 OTHER SUBORDINATE LEGISLATION

The Forum has been asked to make recommendations on the following Articles of the Employment Law, where subordinate legislation is required to enable the minimum wage system to function effectively.

Article 16(4), a pay reference period of one month is recommended.

Article 17, it is recommended that the same method should be used as in the U.K. to calculate an employee’s hourly rate, for the purposes of comparing it with the minimum hourly wage rate.

Article 22 records must be kept for 10 years for all employees. The Forum recommends a salary threshold of £12,000, below which more detailed records must be kept by the employer. For workers earning above £12,000 per annum, meeting the minimum wage provisions is unlikely to be an issue, therefore employers’ records for tax and social security purposes would provide sufficient evidence should a dispute arise.

Article 33(6), a specific maximum amount of compensation for “detrimental treatment” by reason of minimum wage rights is not recommended. The maximum amount that can be awarded in relation to Article 33(6) should be limited only by the total maximum sum a Tribunal can award.

6.6 PROCEDURAL GUIDELINES

The Forum recommends that complex procedures should not be incorporated into legislation. Simple, easy-to-follow, detailed guidelines should be developed to provide guidance on best practice and give clear examples to assist all parties in applying the Law and complying with its requirements.

6.7 CONCLUSION

The Employment Forum believes that their recommendation to the Employment and Social Security Committee not only takes into account the wishes expressed by the majority in the consultation exercise, but also accommodates the advice both learned and received by the Forum in its research on the issue of minimum wage.

The Forum considers that all relevant circumstances have been taken into consideration, with the aim of preventing negative impact on any groups in Jersey, including the resident population and particularly vulnerable

groups, such as workers and employers in the agriculture and hospitality industries, immigrant workers and small businesses.

Updating the Institute of Employment Studies research

The tables below show how the IES figures have been updated.

Option 1: Minimum wages updated by annual increases in average earnings

	Sep 97 data, w.e.f. ^[13] Jan. 2000		Jun 00 data, w.e.f. Sep. 2002		Jun 02 data, w.e.f. Sep. 2004		Jun 03 data, w.e.f. Sep. 2005	
	£	% increase	£	% increase	£	% increase	£	% increase
Minimum wage	£3.70	18.90	£4.40	12.60	£4.95	17.8	£5.18	
Trainee wage	£3.20	18.90	£3.81	12.60	£4.29	17.8	£4.49	

Option 2: Minimum wages updated by annual RPI increases

	Sep 97 data, w.e.f. Jan. 2000		Jun 00 data, w.e.f. Sep. 2002		Jun 02 data, w.e.f. Sep. 2004		Jun 03 data, w.e.f. Sep. 2005	
	£	% increase	£	% increase	£	% increase	£	% increase
Minimum wage	£3.70	11.60	£4.13	8.30	£4.47	12.9	£4.66	
Trainee wage	£3.20	11.60	£3.57	8.30	£3.87	12.9	£4.03	

Option 3: Minimum wages by a combination of average earnings and RPI increases

	Sep 97 data, w.e.f. Jan. 2000		Jun 00 data, w.e.f. Sep. 2002		Jun 02 data, w.e.f. Sep. 2004		Jun 03 data, w.e.f. Sep. 2005	
	£	% increase	£	% increase	£	% increase	£	% increase
Minimum wage	£3.70	15.25	£4.26	10.45	£4.71	15.35	£4.91	
Trainee wage	£3.20	15.25	£3.69	10.45	£4.08	15.35	£4.26	

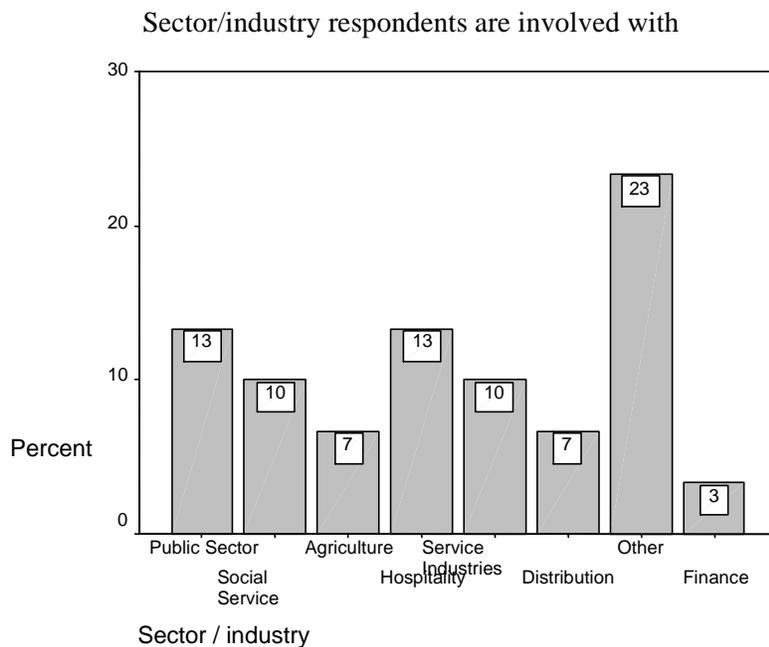
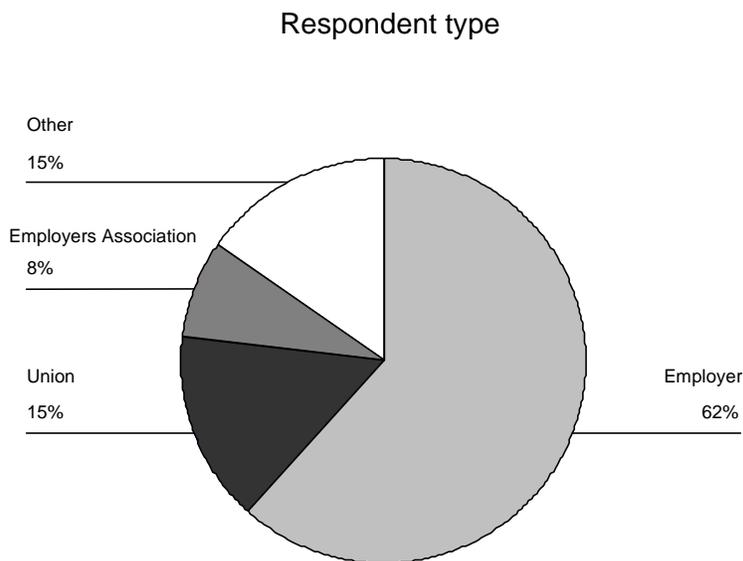
The table below shows the effect of increasing the £3.70 rate in line with increases in the U.K. minimum wage.

	Sep 97 data, w.e.f. Jan. 2000		Jun 00 data, w.e.f. Sep. 2002		Jun 02 data, w.e.f. Sep. 2004		Jun 03 data, w.e.f. Sep. 2005	
	£	% increase	£	% increase	£	% increase	£	% increase
Minimum wage	£3.70	13.90	£4.21	2.45	£4.31	7.15	£4.62	
Trainee wage	£3.20	13.90	£3.64	2.95	£3.73	5.6	£3.94	

“Setting the Minimum Wage” consultation responses

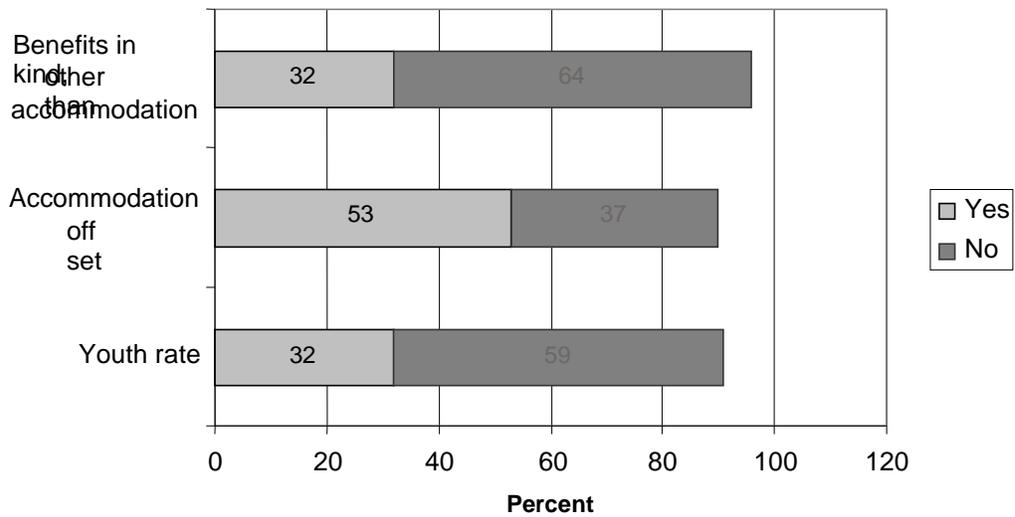
The following charts show the responses to the Forum’s consultation document and questionnaire.

Respondents gave the following information regarding their background.

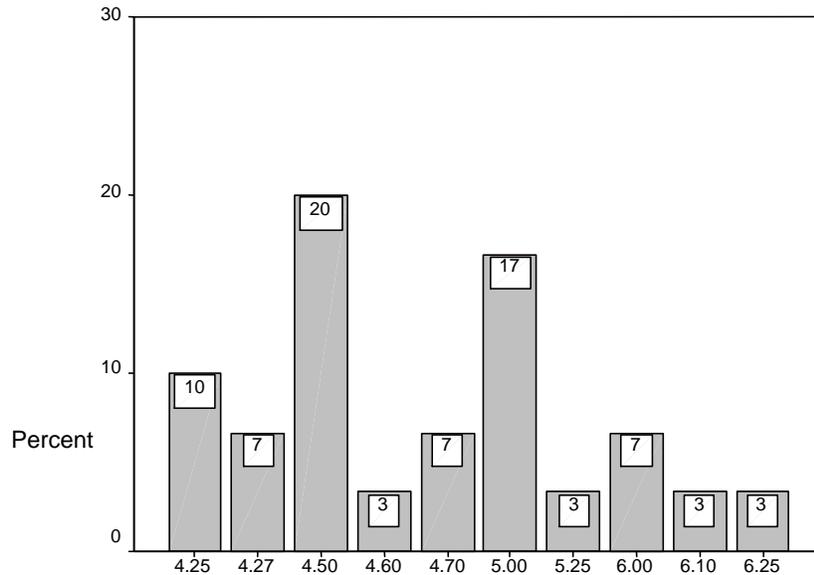


The category ‘other’ includes unions, voluntary work, advisory bodies, and those where the sector was not clear from the response given. Those who did not give an answer were not included here.

Responses to whether the following 3 elements should be incorporated into the minimum wage system.

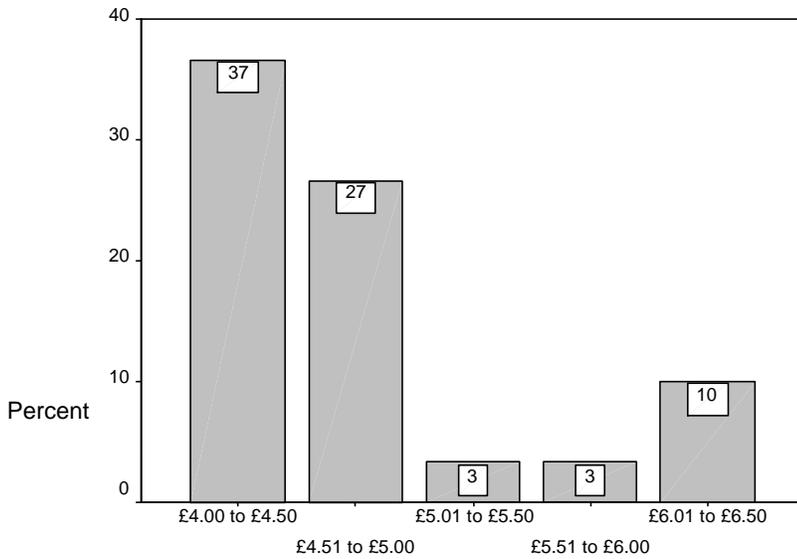


The most frequent response when asked what hourly rate the minimum wage should be set at was £4.50, stated by 20% of respondents. The second most frequent response was £5.00 stated by 17% of respondents.



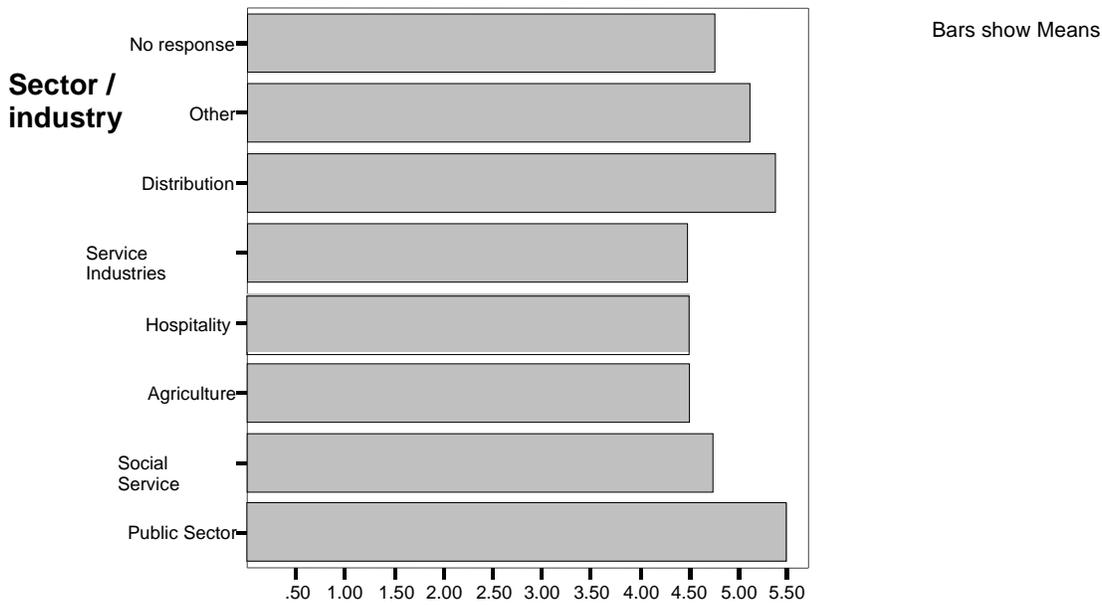
What hourly rate should the minimum wage in Jersey be set at?

Recoded into ranges, 37% of respondents said the minimum wage should be between £4.00 and £4.50, 27% said between £4.51 and £5.00.



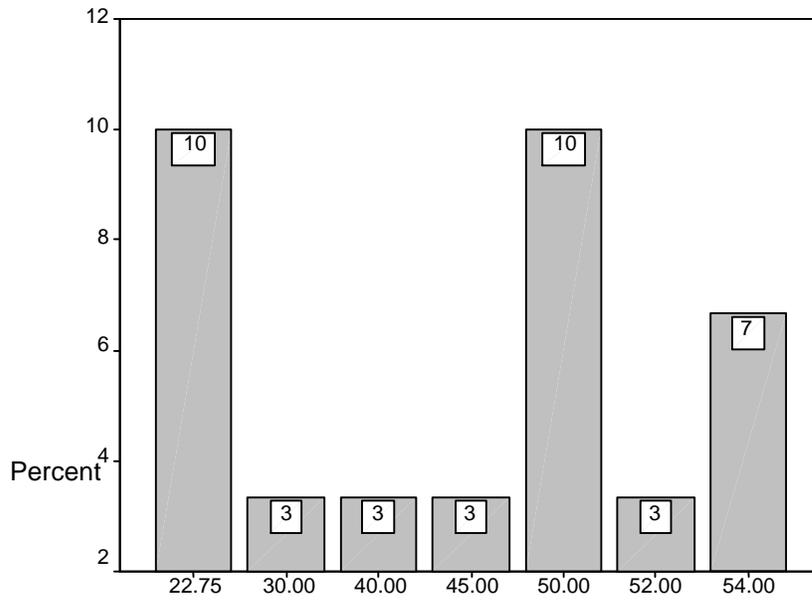
Minimum wage rate, recoded into ranges

The chart below shows the average recommended minimum wage rate, split by the sector respondents worked in. Those working in the Public Sector suggested the highest rate on average. Those in Services, Hospitality and Agriculture suggested the lowest rate on average.



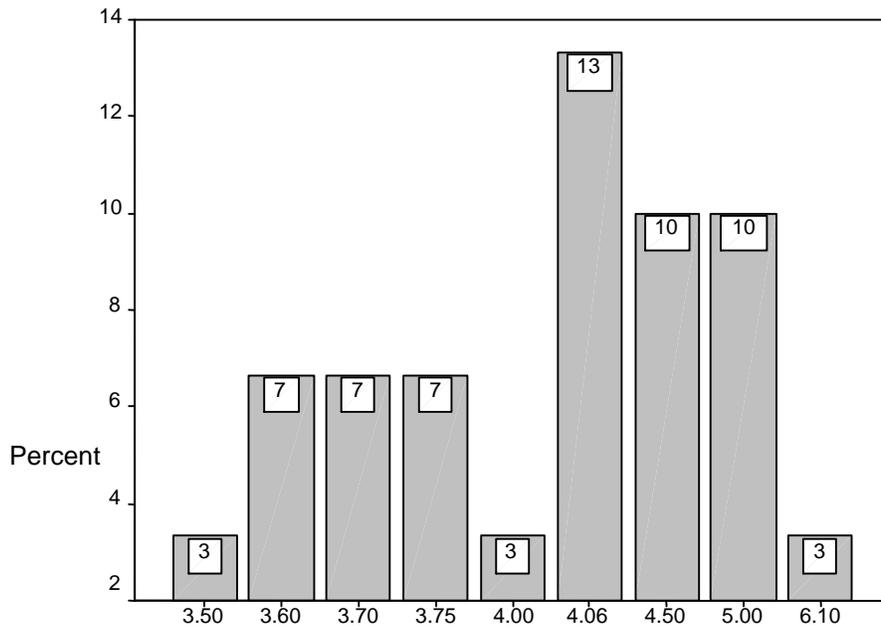
What hourly rate should the minimum wage in Jersey be set at?

10% of respondents considered £22.75 per week (the rate in the U.K. at that time) as a fair off set for a minimum standard of accommodation and a further 10% of respondents considered £50 per week to be a fair offset.



Weekly max amount as a fair off set for a min standard of accommodation

The most frequent response to the question of what rate the trainee minimum wage should be set at was £4.06, stated by 13% of respondents. This was the Committee's recommended figure of £3.70 uprated by the Average Earnings Index. A further 10% said £4.50 and 10% said £5.00.



What hourly rate should the trainee rate be set at?

ANNEX 3

The table below shows the effect the Forum's recommended rates would have on workers' pay in the hospitality and agriculture industries.

The first part of each table shows only standard working hours. The assumption is made that hospitality workers would be provided with accommodation and food, but agricultural workers would only be provided with accommodation.

In practice, additional overtime hours are usually worked, so the effect of 5, 10 and 15 hours' overtime on weekly pay (after deductions) is shown at the end of each sector.

	<u>Current</u>	<u>Recommended</u>
Hospitality		
Standard hourly rate	4.50	5.08
Standard working hours	42	42
Accommodation and food per week	57.00	74.20
Accommodation and food per hour	1.36	1.77
Hourly pay after deductions	3.14	3.31
Weekly pay after deductions	132.00	139.16
5 hours overtime (at time + ¼)	160.13	170.91
10 hours overtime (at time + ¼)	188.25	202.66
15 hours overtime (at time + ¼)	216.38	234.41
Agriculture		
Standard hourly rate	3.73	5.08
Standard working hours	41	41
Accommodation per week	0	55.65
Accommodation per hour	0	1.36
Hourly pay after deductions	3.73	3.72
Weekly pay after deductions	152.93	152.63
5 hours overtime (at time + ¼)	176.24	184.38
10 hours overtime (at time + ¼)	199.56	216.13
15 hours overtime (at time + ¼)	222.87	247.88

MINIMUM WAGE LEGISLATION

**Lodged au Greffe on 10th November 1998
by the Employment and Social Security Committee**



STATES OF JERSEY

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to receive the report of the Employment and Social Security Committee dated 1st October 1998 and to approve the introduction of legislation to provide for –
 - (i) a minimum wage at such single hourly rate as the States may from time to time prescribe by Regulations;
 - (ii) a trainee wage, at such rate as the States may from time to time prescribe by Regulations, to be paid to individuals who are undergoing a training programme approved by the Employment and Social Security Committee after consultation with relevant parties;
 - (iii) individuals to have the opportunity to ensure compliance with the minimum wage through a Jersey Advisory and Conciliation Service and an Employment Tribunal established under a new Employment Law;
 - (iv) for the establishment of an independent body to advise the Committee on matters relating to the provision of a minimum wage, including the provision of a mechanism for uprating the amount of the wage;
- (b) to agree that the minimum wage should be introduced with effect from 1st January 2000, subject to the necessary resources being made available as detailed in the said report;
- (c) to request the Policy and Resources Committee to assess the proposed legislation for inclusion in the States Legislation Programme 1999 to 2001 in the manner described in Part 6 of the States Resource Plan 1998;
- (d) to request the Finance and Economics and Establishment Committees to provide the Committee with sufficient resources to implement these measures as detailed in the said report.

EMPLOYMENT AND SOCIAL SECURITY COMMITTEE

- NOTES:
- 1. The Finance and Economics Committee cannot support this Proposition at this stage, due to the fact that the required level of financial information on which its decision would be based has not been made available. The Committee believes that consideration of this Report and Proposition should be deferred until it has had time to consider its financial implications.
 - 2. The Establishment Committee agreed that no additional staffing would be made available unless there were compensatory savings made elsewhere in the public service.

Report

1. This report has been prepared after considerable debate and discussion on minimum wage over many years. It outlines the past and recent history and puts forward proposals which seek to resolve the conflicting demands of introducing a minimum wage that supports a competitive economy but makes a difference to the low-paid. This report also outlines the Committee's approach, through flexible enabling legislation, allowing detailed subordinate legislation to describe key factors of a minimum wage system.

2. History

2.1 The Employment and Social Security Committee took responsibility for minimum wage when the functions of the previous Industrial Relations Committee were transferred in December 1996 (P.241/96). The issue had originally been lodged by Senator Shenton in March 1993, although at that time the Finance and Economics Committee had presented a report (P.199/93) stating that "the case for a statutory minimum wage (was) not proven". The then Industrial Relations Committee, however, had continued to discuss the issue and, feeling that it had enough evidence to take over responsibility for the principle of the issue, presented its own report and proposition (P.154/96) to the States in October 1996. Comments to this were received from the Finance and Economics Committee (P.170/96) and from the Policy and Resources and Employment and Social Security Committees (P.219/96). These led to an amended proposition (P.225/96) being lodged by Deputy Dorey and, as the then Industrial Relations Committee felt that it was inappropriate to debate such an issue at the final States' Sitting of the year, P.154/96, P.170/96, P.219/96 and P.225/96 were left on the list of projects awaiting a date for debate.

2.2 Taking account of the views expressed by various States Committees over the previous five years, the Employment and Social Security Committee commissioned an impact study to explore the possible effects of the introduction of a minimum wage so that members could be fully informed before debating the matter. The research, however, had only just started when the States debated an amendment made by Senator Shenton to the Policy and Resources Committee's Strategic Policy Report on 4th November 1997. As a result of this amendment, the principle of the introduction of a minimum wage was approved. The Employment and Social Security Committee subsequently completed the research so that it had sufficient information on which to base an appropriate system for Jersey.

3. Research and consultation

3.1 The impact study, which was undertaken by the Institute for Employment Studies, obtained the views of 750 employers, covering a representative sample by industry and company size. In addition the views of representatives of the Jersey Hospitality Association, the Jersey Farmers' Union, the Jersey Federation of Small Businesses, the Institute of Directors, the Chamber of Commerce, the Transport and General Workers' Union and the Institute of Personnel and Development were also sought. In light of the research, the Committee issued a consultative document and invited comment. This was followed up with further consultation with those most affected by a minimum wage, namely the Jersey Hospitality Association, the Federation of Small Businesses, the Jersey Farmers' Union, the Tourism Committee and the Agriculture and Fisheries Committee and also the Transport and General Workers' Union.

3.2 With the exception of the Transport and General Workers' Union, the views obtained from the follow-up meetings demonstrated that those most likely to be affected by a minimum wage were not optimistic about the impact and most urged the Committee to move forward with caution.

4. The principle of a minimum wage

4.1 The principle and philosophy of minimum wage is by no means clear, although it has social, economic and labour market impacts. Whilst it can be argued that it will have little effect on those in poverty who are not in work, for example pensioners, the concept of decent pay for a fair day's work has much to commend it. Others, however, would argue against market intervention. Perhaps a measure of a society's stance on minimum wage is best gauged by the reaction and comments on its introduction –

- (i) Employers in the IES survey were generally in favour of the introduction of a minimum wage. Overall, two-thirds of all employers thought introducing a minimum wage to be a positive step, although most employers generally took a pragmatic stance on the issue and thought that the level at which the minimum was set was more important than the principle.
- (ii) Only when respondents thought they would be damaged by the introduction of a minimum wage did the survey find objection in principle. Most of those in favour thought there were good social reasons for a

minimum wage, whilst those against tended to oppose the principle of intervention in a free market. Employers were fairly evenly divided over whether the minimum wage would help or hinder the overall economy.

- (iii) In the consultation exercise, representatives of both the Hospitality Association and the Jersey Farmers' Union highlighted the fact that minimum wages were already in existence in their sectors, with the minimum being set in negotiation with the TGWU.

4.2 In reaching its recommendations on a minimum wage in Jersey, the Committee has adopted the following principles: that it should support a competitive economy; be set at a prudent level; be simple and straightforward; and yet make a difference to the low-paid.

5. The incidence of low pay

5.1 The survey estimated that, on 1st September 1997, the numbers on low pay were as follows –

	No. of employees as at 1st September on less than:			
	£3.00	£3.50	£4.00	£4.50
Total employees per wage band ^[14]	759	2,546	2,910	2,538

The survey also identified that a further c.1700 had been employed on basic rates below £4.50 during the previous year, most of whom were seasonal workers whose contracts had finished before 1st September.

5.2 In general, these people –

- (i) mainly carried out one of four types of jobs – 27 per cent fulfilled domestic or cleaning duties including chambermaids and porters, 21 per cent were receptionists or clerical or sales assistants, a further 15 per cent were agricultural workers or labourers and another 15 per cent were waiters or bar staff;
- (ii) were broadly equally divided between men and women;
- (iii) had an average age of 27.5 years (14 per cent aged under 18, a further 32 per cent ~~24~~, with half being 25 years or more);
- (iv) had mainly been with their employer for over two years;
- (v) were mostly in permanent employment although one-third had temporary jobs and one-fifth were trainees;
- (vi) worked an average of 38 hours a week;
- (vii) were generally able-bodied;
- (viii) generally classified themselves as Jersey residents, although this did not mean they had residential qualifications.

5.3 Information about the nature of the employers paying less than £4.50 was also obtained –

- (i) employers of low-paid staff generally found it more difficult to raise prices and operated in more competitive markets than other firms;
- (ii) long established, rather than new businesses, were more likely to employ people on a basic rate of less than £4.50;
- (iii) employers with low-paid employees were more likely to have negotiated salaries with trade unions;
- (iv) two-thirds of employers with employees on less than £4.50 an hour found it very easy or quite easy to recruit people at this level and most employers considered labour turnover amongst this group to be low;

- (v) six per cent of Jersey employers employed at least one person on less than £3.00 an hour;
- (vi) 15 per cent employed at least one person on less than £3.50 an hour;
- (vii) 22 per cent employed at least one person on less than £4.00 an hour;
- (viii) 31 per cent employed at least one person on less than £4.50 an hour;
- (ix) in most cases low-paid workers constituted a significant proportion of the total number of people employed in a firm. For example, in over two-thirds of businesses with employees on less than £4.50, such employees comprised over half the workforce;
- (x) larger employers were most likely than smaller employers to employ someone on less than £4.50;
- (xi) over half the employers in the agriculture and hospitality sectors and 40 per cent in retailing employ someone on an hourly rate of less than £4.50.

5.4 In summary, the employers most affected will be those in the agriculture and hotel and catering sectors, although retailing and the miscellaneous sector, which includes activities such as hairdressing, will also be particularly affected. Even some non-service sector employers will feel an impact.

6. Committee's approach

6.1 The Committee's approach, subject to States approval of the recommendations made in this report, would be to introduce enabling legislation setting the framework and the legal definitions, supported by Regulations that define the details. The Committee, in this report, however is outlining some of the key issues that will need to be resolved and debated in the construction of the legislation.

7. Defining the wage

7.1 Only one third of low-paid staff in Jersey receive a basic wage. The majority have complex pay structures, with 25 per cent being eligible for bonus payments e.g. for attendance or performance, 25 per cent for shift pay, ten per cent having the equivalent of their Social Security contributions paid for them, and 56 per cent benefiting from in kind payments such as accommodation, uniform and meals.

7.2 The Employment and Social Security Committee, however, feels that the definition of minimum wage should be simple and fair, easy to comply with and straightforward to enforce. For these reasons the Committee is recommending that payments based on output, productivity or performance should count towards the minimum wage, including, for example, payment by results, commission, bonuses, and tips and gratuities paid through the payroll during the relevant pay period (this is in line with current practice for Employment and Social Security contributions and for taxation purposes).

7.3 The Committee believes that, in whatever way workers' pay is defined or whatever hours they work, only pay for "standard" working should count. Hence employers should not be able to include benefits and premium payments, such as overtime and shift premia. However, taking account of the unique situation in Jersey with regard to accommodation, and not wishing to further inflate the housing rental market, the Committee recommends that accommodation should be the only benefit-in-kind that should be taken into account, for which an offset should be allowed. The Committee is recommending that this offset should be determined by regulations and suggests that it should be introduced at £40.00 a week. This is much less than the amounts suggested by the industries affected, but probably represents a realistic deduction rather than a market value.

7.4 The Committee recommends that all actual working time should be covered by the minimum wage. To help enforcement and to enable some employers and employees to continue with more flexible employment practices that are to the benefit of both parties, the Committee recommends that compliance should be measured by averaging pay over the workers' normal pay period up to a maximum of one calendar month.

8. Training and development

8.1 The acquisition of skills remains a priority for workers of all ages, especially those moving into a new sector or returning to work. A new employee, however, who brings no prior knowledge or experience to an employer needs time to be developed and initially, therefore, they may not contribute fully to the workforce. In consultation with the

Training and Employment Partnership, the Committee feels strongly that the minimum wage should not become a barrier to the receipt of structured training or taking on an inexperienced worker. To achieve this, and in order to provide an incentive for employers to train, the Committee recommends that workers on accredited training courses should be eligible for a “trainee rate” for a maximum of one year only when beginning a new job with a new employer.

9. Choosing the rate

9.1 The Employment and Social Security Committee feels that a judgement needs to be made about the balance between a high minimum wage, which would make a more substantial difference to the low-paid, and the risk that jobs might be lost, that the cost of living might increase or that there might be other additional consequences to the economy and competitiveness of the Island.

9.2 Consideration needs to be given to a wide range of impacts – on differentials, business costs, competitiveness, inflation and employment. The Employment and Social Security Committee is recommending a rate that it believes should limit the effect on differentials, although the Committee is aware that the impact will vary from sector to sector. The hospitality industry gives most cause for concern in this area because of the more complex wage structures that exist in this sector.

9.3 Immigration is another factor to be taken into account. The rate should not encourage immigration and some consideration therefore needs to be given to the rate that is set in the United Kingdom.

9.4 The Committee feels that the costs to businesses will vary substantially, both between and within sectors. Evidence from the research indicates that the key impact will be on profitability – with ten per cent of employers saying that their business would no longer be viable if they had to raise wages to a new minimum level. According to employers, there is limited scope to improve productivity, although 25 per cent did expect to employ fewer people if a minimum wage was introduced.

9.5 The IES research demonstrates that –

- (i) of those employers with low-paid employees, 43 per cent said they definitely thought £3.00 an hour to be an acceptable rate, only 27 per cent thought so about £4.50;
- (ii) overall the majority of employers with low-paid employees think a minimum wage of around £3.50 to £4.00 an hour acceptable;
- (iii) of those employers who feel they would be harmed by the introduction of a minimum wage, the peak is around £3.50, although a majority of these employers felt that a minimum wage of around £3.50 – £4.00 would be at least possibly acceptable;
- (iv) 59 per cent of employers in the agricultural sector thought a minimum wage level of £3.50 would be acceptable, compared with only 31 per cent in favour of a rate of £4.50;
- (v) in hotels and catering and the retail sectors the positive balance peaks at £4.00 an hour;
- (vi) about 450 jobs could be lost if a minimum wage of over £4.00 was introduced immediately.

9.6 Having taken evidence from numerous sources and applied the principles described earlier in this report – that a minimum wage should offer real benefits to the low-paid, while avoiding unnecessary risks to businesses and to jobs and discouraging immigration – the Committee has concluded that the appropriate rate for the minimum wage should be £3.70 an hour initially and that a trainee rate should be set at £3.20 an hour for the maximum period of up to 12 months discussed previously. This could lead to a pay rise for up to 4,000 people based on the 1997 survey.

10. A Minimum Wage Commission

10.1 The Employment and Social Security Committee strongly recommends that a body, chaired by an independent person and comprising employer and employee representatives, should be established in Law with the purpose of reviewing the minimum wage and its system of administration. Based on its deliberations, the Employment and Social Security Committee would make recommendations to the States concerning the system and future rates.

11. Exemptions

11.1 The Employment and Social Security Committee believes that, at the suggested rates, the minimum wage should apply to all workers, and no exemptions are therefore recommended at this stage. However, the legislation should include provision for the States to make exemptions, by Regulations, to a minimum wage in the future, so that the Island can retain flexibility where necessary. It should be noted that the intended definition of “worker” encompasses all people in employment over the school leaving age, but excludes voluntary workers who wish to work for no pay and individuals who are undertaking work activities principally for therapeutic reasons.

12. Implementing and enforcing

12.1 The IES survey provides clear evidence that enforcement of a minimum wage will be a major issue in Jersey. Most employers in the survey felt that a minimum wage should be strictly enforced, although they were also concerned that it would lead to greater bureaucracy. The importance of enforcement is emphasized by the finding that 40 per cent of employers potentially affected by a minimum wage said they would not take any notice and carry on as before.

12.2 For these reasons the Committee strongly believes that the introduction of a minimum wage should coincide with its recommendations concerning wider industrial relations reforms, in particular the introduction of a framework for dispute resolution, a route to access enforcement by the individual and legislation to protect workers from unfair dismissal. The Committee is therefore recommending that a Jersey Advisory and Conciliation Service and an Employment Tribunal be established, and legislation on unfair dismissal be introduced, prior to or at the same time as the introduction of the minimum wage. It is important that an individual has reasonable protection against unreasonable dismissal in law and a way of pursuing action against an employer not paying the minimum wage.

12.3 To aid enforcement and to ensure that all individuals can understand their hourly rate of pay, the law will also have to require employers to provide all employees with a pay slip which contains the minimum wage rate and sufficient information to enable workers to confirm readily whether they have received the statutory minimum. The Employment and Social Security Committee would have responsibility for verifying employers’ compliance with the minimum wage. For this to be achievable, however, employers will be required to keep appropriate records, so that they can demonstrate that they have met the requirements of a minimum wage.

12.4 Taking into account the impact on businesses and the requirement for new and additional records to be kept, the Employment and Social Security Committee feel that employers should be given reasonable time to prepare for the minimum wage (employers in the hospitality sector, for example, set their tariffs 18 months in advance in order that they can be included in tour operator brochures). The Committee therefore proposes that the minimum wage should commence with effect from the 1st January 2000. This suggestion, however, is totally dependent on the availability of resources in terms of –

- (i) the introduction of the wider industrial relations reforms which are being developed, and in particular unfair dismissal, a Conciliation Service and an Employment Tribunal;
- (ii) adequate financial and manpower resources (as described below); and
- (iii) appropriate law drafting priority.

13. Resources

13.1 To service the Minimum Wage Commission and carry out the necessary advisory and enforcement duties, at least three additional public sector employees (civil servants) will be required, and adequate funding for their employment (estimated to be £110,000 salary costs for the year 2000) in order to prepare law drafting briefs, handle enquiries, give guidance, police the system and prosecute where appropriate. Depending on the complexities involved, more staff may be required, particularly in the initial stages whilst the principles are being established. The alternative is to contract out some of this work but the possibilities may be limited as the “inspectors” would need to be stationed on Island. It is not known whether there is any private sector business in this market in Jersey or whether the States would wish to give a private business powers of entry onto employers’ premises.

13.2 The establishment of the Jersey Advisory and Conciliation Service and the Employment Tribunal will carry additional resource requirements, which are estimated to be in the region of £200,000 each year. However this would cover all arbitration, conciliation and appeals work under all aspects of the proposed Employment Law (see Annex 1).

13.3 To meet this timescale, substantial law drafting resources will have to be allocated or re-allocated to the

development of primary and subordinate legislation for the introduction of a minimum wage and the proposed system of administration, as well as to the other legislative matters referred to above in the context of wider industrial relations reforms. The Policy and Resources Committee may have to instruct the Law Draftsman accordingly.

- 13.4 An additional £100,000 each year will be required for Employment and Social Security funded employment schemes, covering the Headway programme for the long-term unemployed and disabled people employed within a sheltered work environment which currently includes training allowances and wages below the recommended minimum rate of £3.70. Other Committees with other responsibilities may also require additional funding.

14. Conclusions

- 14.1 The recommendations of the Employment and Social Security Committee form a coherent package which aims to be simple, straightforward, prudent and supportive of a competitive economy.
- 14.2 Introducing a minimum for wages should not deter employers from continuing to pay well above this level. The Committee has recommended a package that takes account of business realities but removes the worst cases of exploitation, thereby making a difference to a large number of workers. Continuing review and periodic uprating by an independent body should ensure that the minimum wage finds a balance between the needs of the low-paid and the economic needs of the Island.

15. Summary of recommendations

15.1 The rate

- (i) The minimum wage should be a single hourly rate as the States may from time to time prescribe by Regulations.
- (ii) A trainee rate, to be prescribed by Regulations, should be available for individuals who are on accredited training courses. Accredited training courses should be prescribed by regulations in consultation with relevant parties and the trainee rate should be restricted to a 12 months maximum period.

15.2 Implementing and enforcing

- (i) It is proposed that the minimum wage should commence with effect from 1st January 2000, subject to the necessary resources as detailed in the report being made available.
- (ii) Individuals should have the opportunity to ensure compliance with the minimum wage through the proposed broader Employment Law, which includes the establishment of both a Jersey Advisory and Conciliation Service and an Employment Tribunal.

15.3 Minimum Wage Commission

An independent body should be established to advise the Employment and Social Security Committee on future recommendations in relation to the minimum wage. These recommendations should include a mechanism for uprating.

1st October 1998.

SUMMARY OF THE PROPOSED EMPLOYMENT LAW REFORMS

1. Employment legislation currently in place in Jersey

- 1.1 Prior to the formation of the Industrial Relations Committee in 1969, no Committee had specific responsibility for employment of industrial relations matters. For a variety of reasons, including lack of resources, there has been no co-ordinated approach towards employment legislation and, as a result, such legislation is now largely fragmented, outdated and ineffective.

2. The proposed new employment legislative framework

- 2.1 The Employment and Social Security Committee is proposing that specific measures are introduced to protect both employers and employees, and will be consulting on the following proposals over the coming months –

- (i) a new EMPLOYMENT LAW is introduced to consolidate or replace existing legislation and provide additional rights and obligations for both employers and employees in the Jersey context;
- (ii) a JERSEY ARBITRATION AND CONCILIATION SERVICE is introduced to prevent and resolve problems in the workplace;
- (iii) an EMPLOYMENT TRIBUNAL is introduced to enforce the Law when advice and discussion fail to produce a resolution to a problem.

- 2.3 It is envisaged that the main Law would contain the core provisions, with Regulations covering the details of application and of processes and that Approved Codes of Practice would be used where possible to support the legislation.

3. Arbitration, conciliation and enforcement

- 3.1 In the United Kingdom, ACAS is generally acknowledged to be a very effective service by all concerned, including representatives both of employers and employees. It should be straightforward to set up a similar, equally effective organisation locally. A fundamental principle is that the service must be clearly independent of any political influence and of influence from employers and employees. For this reason, it is considered that the Jersey Advisory and Conciliation Service (JACS) should be established as an independent agency which has no direct links to the political system, but which is funded from Government revenues.

- 3.2 Before providing assistance, JACS would encourage parties to make full use of any agreed procedures they may have for negotiation and the settlement of disputes. Its main duty would be to assist in building harmonious relationships between employers and employees, collectively and individually, where required, and in particular to –

- (i) prevent and resolve industrial disputes;
- (ii) resolve individuals' disputes over employment rights;
- (iii) provide information and advice about employment matters and practice;
- (iv) promote fairness and good practice in the conduct of employment relationships.

The aim of JACS would be to offer to assist both parties involved in a dispute to reach a voluntary settlement without the need to go to an Employment Tribunal hearing.

- 3.3 It is also proposed that an Employment Tribunal be established with a legally qualified Chairman and two members, one drawn from a panel of people representing employees and one from a panel representing employers to provide a suitable body to –

- (i) resolve disputes or differences between employer(s) and employee(s) concerning matters relating to employment or non-employment and terms and conditions of employment where voluntary agreement cannot be reached, with or without a third party; and

- (ii) enforce employment rights and obligations provided by relevant legislation, both current and future (including minimum wage).

4. Resource implications

- 4.1 A Jersey Advisory and Conciliation Service would need to be headed by a Director who is a senior professional in the employment relations field with appropriate high level skills and experience and supported by an Advisory and Conciliation Officer, with some administrative support. It would be a small but highly professional team.
- 4.2 Costs of the Employment Tribunal will be minimised if it is able to use the accommodation allocated to JACS and is supported by JACS staff.
- 4.3 In total it is estimated that the costs will be in the region of £200,000 each year which will include staffing, the operation of JACS and the accommodation for the Employment Tribunal. Savings of approximately £50,000 could be made from the amalgamation of the current Industrial Relations service.

[1] 'Minimum Wage Legislation' Report and Proposition (P.227/1998), p.10.

[2] 'Reviewing Jersey Minimum Wage,' The Institute for Employment Studies, August 2001.

[3] The category 'other' includes unions, voluntary work, advisory bodies, and those where the sector was not clear from the response given.

[4] It should be remembered that these rates were recommended in mid to end 2002. Questions about the rates and offsets were asked separately; therefore respondents' decisions on the rates may not have taken full account of the interaction of different offsets with the minimum wage rate.

[5] "The Minimum Wage in Jersey", OXERA, 15th May 2003, p.34.

[6] Page 7.

[7] 'Other' includes all other industries and services.

[8] *The Setting of a Minimum Wage Rate – Response from the Jersey Hospitality Association to the Employment Forum* (September 2003), p.4.

[9] *The Impact of a Minimum Wage in Jersey*, The Institute for Employment Studies (1998), p.29.

[10] Minimum Wage Legislation Report and Proposition (P.227/98), p.5.

[11] The Low Pay Commission's First Report to the Prime Minister, published in June 1998.

[12] *Building on Success*, The National Minimum Wage – Fourth Report of the Low Pay Commission (March 2003), p.107.

[13] w.e.f. – 'with effect from'.

[14] One-third of these people will also have benefits in addition to their wage.