

Minimum Wage Bill 2013

(No: of 2013)

EXPLANATORY MEMORANDUM

The Minimum Wage Bill would implement proposals for workers in the Falkland Islands to be guaranteed a minimum wage for their work.

This Explanatory Memorandum is intended to assist readers of the Bill by providing a detailed explanation of the Bill's provisions.

The Bill has 34 clauses and 2 Schedules. It forms part of a package of draft legislation that also includes a draft order and two sets of draft regulations dealing with specific issues – copies of the drafts are also being gazetted with the Bill.

The Bill is divided into 17 Parts:

- Part 1 deals with the title of the proposed Ordinance (the Minimum Wage Ordinance) and the procedure for bringing it into force.
- Part 2 defines a number of words and phrases used elsewhere in the Bill. Key terms that are defined in Part 2 include: “worker”; “eligible work”; and “pay reference period”.
- Part 3 deals with the entitlement of a worker to a minimum wage (and the obligation on employers to make additional payments if the amounts that workers are treated as having been paid are less than the minimum wage to which they are entitled).
- Part 4 deals with minimum wage rates and includes duties for the Governor to set minimum wage rates for adults (those aged 18 or over) and young persons (those aged 16 or 17) and for those rates to be kept under review.
- Part 5 deals with the calculation of the hours worked by a worker for the purposes of the minimum wage. This would be dealt with in the draft Minimum Wage (Calculation of Hours Worked) Regulations.
- Part 6 deals with the calculation of the amount treated as having been paid to a worker for the purposes of the minimum wage. This would be dealt with in the draft Minimum Wage (Calculation of Amount Paid) Regulations.
- Part 7 deals with the obligation on employers to keep records for minimum wage purposes and the rights of workers to access their records.
- Part 8 deals with the right of workers not to suffer adverse consequences because of their entitlement to a minimum wage or because of action they take to enforce their rights.

- Part 9 deals with procedures by which workers can enforce their rights in the Summary Court – however, it is intended that court action should only be a last resort.
- Part 10 deals with the burden of proof in minimum wage cases.
- Part 11 deals with appeals from the Summary Court in minimum wage cases.
- Part 12 deals with restrictions on contracting out of the minimum wage legislation – attempts to contract out would not be effective but it would be possible to settle claims out of court if they arise.
- Part 13 deals with publicity for the minimum wage legislation, guidance for employers and workers and the information to be given by employers to their workers.
- Part 14 deals with consequential amendments, including an amendment to the Employment Protection Ordinance (Title 32.3) dealing with dismissals relating to the minimum wage. Other consequential amendments could be made if necessary.
- Part 15 would allow for transitional provisions to be made.
- Part 16 makes it clear that the minimum wage legislation binds the Crown and would apply to the Crown as an employer.
- Part 17 would repeal the Labour (Minimum Wage) Ordinance (Title 32.5), which dates from 1942.

Part 1 – Introduction

Under *clause 2*, the Ordinance would not come into force immediately, even if the Bill is passed. It would only come into force when a notice (or series of notices) is published in the *Gazette* to bring it into force (either all at once or in stages).

Part 2 – Interpretation

Clause 3 defines a number of words and phrases that are used elsewhere in the Bill. It also contains indexing references to other provisions in which words or phrases are defined.

Clause 4 defines “work” and related expressions: it provides that someone who is performing a service or services is doing work.

Clause 5 defines “worker”, which is a key concept in the minimum wage legislation:

- The primary definition of “worker” is tied to the concept of a “relevant work contract” (which is itself defined in *clause 3* and includes a contract of service or one of apprenticeship, but also includes some other contracts under which work is done).

- However, *Schedule 1* deals with special cases:
 - *Paragraph 1* makes it clear that those employed by FIG or the UK Government can be workers – however, not all work for FIG or the UK Government is eligible work (and *Schedule 2* deals with that).
 - *Paragraph 2* deals with agency workers.
 - *Paragraph 3* deals with workers whose employers are themselves employed (and who do work for that ultimate employer).
 - *Paragraph 4* deals with home workers.
- Other special cases could be dealt with in subsidiary legislation – although there are no current plans to do that.

Clause 5(3) would allow the Governor (who would normally be acting on the advice of Executive Council) to amend *Schedule 1*.

Clause 5(4) would allow the Governor (again, normally, acting on the advice of Executive Council) to make orders dealing with special cases.

Clause 6 defines “eligible work”, which is another key concept in the minimum wage legislation:

- The primary definition of “eligible work” is work that is done in the Falkland Islands by someone who is a worker under the previous definition and who is doing it under a relevant work contract.

Work that is not done under a relevant work contract (eg because it is done by someone under a purely informal arrangement) is not covered by the minimum wage.

- However, *Schedule 2* deals with special cases:
 - *Paragraph 1* deals with the territorial scope of the minimum wage and provides that there are only two situations in which the minimum wage applies to work done away from the Falkland Islands or outside the 12 mile limit:
 - The first exception covers temporary work outside the Falkland Islands by someone who normally works in the Falkland Islands.
 - The other exception covers the offshore minerals industry and its support operations.
 - *Paragraph 2* deals with work on board vessels. It excludes the crew of fishing vessels from the minimum wage and that exception also applies to work on board other vessels (unless they normally operate in Falkland Islands waters or are supporting the offshore minerals industry).

- *Paragraphs 3 to 10* deal with other exceptions from the minimum wage – these exceptions cover:
 - service in the UK armed forces, the Falkland Islands Defence Force and the cadet forces;
 - work done as part of the Entry to Employment programme or the Employment Programme (or similar programmes or schemes that might operate in the future);
 - short-term work experience;
 - voluntary work;
 - work done by resident members of a religious or similar community;
 - work done by prisoners as part of the prison regime;
 - work done under a community service order imposed by a court; and
 - work done as part of family life by a member of the family or someone who is treated as being part of the family.
- Other special cases could be dealt with in subsidiary legislation – although, again, there are no current plans to do that.

Clause 6(3) would allow the Governor (normally, acting on the advice of Executive Council) to amend *Schedule 2*.

Clause 6(4) would allow the Governor (again, normally, acting on the advice of Executive Council) to make orders dealing with special cases.

Clause 7 defines “pay reference period”, which (again) is a key concept in the minimum wage legislation:

- A pay reference period could not be longer than 1 month.
- However, whenever a worker is paid for a period that is shorter than 1 month (which might be, for example, because: the worker is paid weekly or fortnightly; the work is casual or short term; or the payment covers part of a month at the start or end of a contract), the pay reference period would be the same as the period for which the worker is paid.

The effect of *clause 11(2)* would be that, whenever a worker’s 18th birthday falls during a pay reference period, it would have to be split into two: up to the worker’s 18th birthday; and from then on.

Part 3 – Entitlement to minimum wage

Clause 8(1) would establish the right of workers aged 16 or over to a minimum wage for their eligible work.

Clauses 8(2) and 8(3) provide for the amount of the minimum wage for a pay reference period to be calculated using a formula based on multiplying an hourly minimum wage rate by the number of hours worked.

The minimum wage rate used in that formula would depend on the worker's age: under *clause 11*, there are separate rates for those aged 18 or over and those aged 16 or 17.

The hours worked would be calculated using regulations made under *clause 14*. A detailed explanation of how it is proposed this would be done is set out at the end of the draft Minimum Wage (Calculation of Hours Worked) Regulations.

Under *clause 9(a)*, the amount that a worker would be treated as having been paid for minimum wage purposes would not be the same as the amount the worker actually receives in cash or by cheque or bank transfer. Instead, it would be calculated using regulations made under *clause 15*. A detailed explanation of how it is proposed this would be done is set out at the end of the draft Minimum Wage (Calculation of Amount Paid) Regulations.

Under *clause 9(b)*, the amount that a worker is treated as having been paid must not be less than the minimum wage calculated using the formula.

If it is less, *clause 10* would create an entitlement for the worker to an additional payment of the difference. If necessary, proceedings could be brought in the Summary Court under *clause 20* to claim the additional payment – however, it is intended that court proceedings should be a last resort.

Part 4 – Minimum wage rates

Under *clause 11(1)*, there would be two different minimum wage rates:

- For workers aged 18 or over, there would be a minimum wage rate for adults – it is proposed that this would initially be £5.05 per hour.
- For workers aged 16 or 17, there would be a minimum wage rate for young persons – it is proposed that this would initially be £3.10 per hour.

Because the two different rates involve an element of age discrimination, consideration has been given to the requirements of section 16 of the Constitution (which prohibits unjustified discrimination in Falkland Islands legislation). It is considered that the difference can be justified on the basis that younger workers are generally not as competent or experienced as adult workers and so are less valued by employers.

Clause 11(2) deals with the specific situation in which a worker's 18th birthday falls during a pay reference period.

Under *clause 12*, the Governor would have to make an order to set the minimum wage rates. A draft of the order setting the two rates is gazetted separately and the Governor would make this order on the advice of Executive Council.

Under *clause 13*, the minimum wage rates would have to be kept under review and the Governor (normally, acting on the advice of Executive Council) would be able to change the minimum wage rates by order.

To ensure that employers are given advance notice of changes to minimum wage rates, *clause 13(3)* provides that changes cannot come into effect for at least 3 months after they have been published.

Part 5 – Calculation of hours worked

Under *clause 14*, the Governor would have to make regulations about the way in which the hours of eligible work done by a worker are calculated for minimum wage purposes. A draft of the regulations is gazetted separately and the Governor would make these regulations on the advice of Executive Council.

In summary, hours spent working, training and travelling in the course of work would count as hours of eligible work but hours spent travelling between home and work would only count if the travel forms part of the worker's duties.

If necessary, the regulations could be amended or replaced in the future – if doing that, the Governor would normally have to act on the advice of Executive Council.

Part 6 – Calculation of amounts treated as having been paid

Under *clause 15*, the Governor would have to make regulations about how to calculate the amount a worker is to be treated as having been paid for minimum wage purposes. A draft of the regulations is gazetted separately and the Governor would make these regulations on the advice of Executive Council.

There is a detailed explanation at the end of the draft regulations about how these calculations would be done. However, in summary, the amount that a worker is actually paid would be adjusted to take account of payments that would not count for minimum wage purposes and certain deductions that would be added back for minimum wage purposes.

If necessary, the regulations could be amended or replaced in the future – if doing that, the Governor would normally have to act on the advice of Executive Council.

Part 7 – Record keeping by employers (and worker's right to access employer's records)

Under *clause 16*, employers would have to keep records for minimum wage purposes.

There would be no prescriptive requirements in the legislation itself about what records are kept and how they are kept – the requirement would be outcome-based in that an employer’s records would have to be adequate enough for the employer to be able to show to a worker that the minimum wage has been paid to that worker.

However, it is envisaged that FIG would be issuing guidance to employers about the minimum wage legislation and that this will include guidance about how to comply with the requirement to keep records.

Failing to keep proper records would not be a criminal offence but, in the event of a dispute, the Summary Court would be able to award damages (of up to £5,000) and/or costs against an employer who had not kept proper records or could not show that the minimum wage had been paid.

Clause 17 would give workers a right of reasonable access to their employer’s records for the purpose of confirming that the minimum wage has been paid.

It is envisaged that FIG would be issuing guidance about the minimum wage legislation to workers as well as employers and that the guidance will also cover what is reasonable (and what is not) in relation to the right of reasonable access to records.

If an employer does not give a worker access to records, that would not be a criminal offence but, in the event of a dispute, the Summary Court would be able to award damages (of up to £5,000) and/or costs against an employer who had not given a worker reasonable access to records.

Clause 18 would establish a formal process for dealing with requests for access to records – although it is hoped that most requests could be dealt with informally:

- If a worker is not given access to records on the basis of an informal request, it would be possible for the worker to make a formal request by giving the employer a production notice.
- An employer who has received a production notice would have 7 days in which to either:
 - arrange for the records to be made available to the worker; or
 - issue a refusal notice, explaining why the request is unreasonable.
- Unless a refusal notice is issued, access to the records would normally have to be given to the worker within 14 days from the date on which the employer received the production notice.

Again, it is envisaged that the guidance for workers and employers will deal with this process.

As a last resort (and it is hoped that it would only ever have to be a last resort), disputes could be resolved by a complaint to the Summary Court under *clause 21*.

Part 8 – Worker’s right not to suffer detriment relating to minimum wage

Under *clause 19*, workers would have the right not to suffer adverse consequences just because they have the right to a minimum wage or do anything to exercise their rights under the minimum wage legislation.

Clause 19(2) is intended to make it clear that the right not to suffer adverse consequences for minimum wage related reasons includes not just the right not to be dismissed but also the right not to suffer other adverse consequences.

Clause 19(3) is intended to make it clear that it would not just be going to court under the minimum wage legislation (or threatening to go to court) that would be covered by the protection from adverse consequences – exercising rights under the minimum wage legislation in other ways and insisting on them would be protected too.

Protection from dismissal is dealt with in *clause 22* and an amendment to the Employment Protection Ordinance that would be made by *clause 30*.

Protection from other adverse consequences is dealt with in *clause 23*.

Part 9 – Enforcement by workers of their rights

Clause 20 deals with proceedings in the Summary Court for workers to claim additional payments under *clause 10* if they believe that they have not been paid the minimum wage and have not been able to resolve the situation in another way:

- *Clause 20(3)(a)* deals with the additional payments themselves: if the Summary Court agrees with the worker that they are due, it would order the employer to pay them – however, there would be a time limit and the Summary Court would not be able order additional payments from more than 6 years before the proceedings were brought.
- Under *clause 20(3)(b)(i)*, the Summary Court would also be able to award interest on the additional payments at 8% per year over the Bank of England base rate.
- Under *clause 20(3)(b)(ii)*, the Summary Court would also be able to order the employer to pay the worker damages of up to £5,000, but only if the employer’s conduct were to justify those damages.

Under *clause 28(2)*, the Summary Court would have to take guidance issued by FIG into account when deciding whether or not to award damages and, if so, how much to award.

- The normal rule in court proceedings is that whoever loses the case has to pay costs to the winner, but, under *clause 20(4)*, costs would not normally be awarded in minimum wage claims.

However, *clause 20(4)* would still allow the Summary Court to award costs against:

- a worker who has brought a case to court unreasonably; or
- against a worker or employer who has conducted the court case in an unreasonable way.

Under *clause 28(2)*, the Summary Court would have to take guidance issued by FIG into account when deciding whether or not to award costs and, if so, how much of them to award.

Clause 21 deals with complaints in the Summary Court by workers who have been unable to resolve disputes about access to their employers' minimum wage records:

- The effect of *clause 21(1)(a)* is that a worker would have to go through the procedure in *clause 18* before making a complaint to the Summary Court.
- *Clause 21(1)(b)* deals with the circumstances in which workers could make a complaint to the Summary Court about access to employers' records.
- Under *clause 21(3)*, the time limit within which a complaint must be made would normally be 3 months – however, the Summary Court would be able to extend that time limit in certain circumstances.
- Under *clause 21(4)*, the Summary Court would be able to order the employer to produce records if it agrees that the employer has breached the worker's right of reasonable access to records.
- Under *clause 21(5)(a)*, the Summary Court would also be able to award damages for a loss that the worker has actually suffered because of the breach of that right.
- Under *clause 21(5)(b)*, the Summary Court would also be able to order the employer to pay the worker damages of up to £5,000, but only if the employer's conduct were to justify those damages.

Under *clause 28(2)*, the Summary Court would have to take guidance issued by FIG into account when deciding whether or not to award damages and, if so, how much to award.

- The normal rule in court proceedings is that whoever loses the case has to pay costs to the winner, but, under *clause 21(6)*, costs would not normally be awarded in minimum wage claims.

However, *clause 21(6)* would still allow the Summary Court to award costs against:

- a worker who has brought a case to court unreasonably; or
- against a worker or employer who has conducted the court case in an unreasonable way.

Under *clause 28(2)*, the Summary Court would have to take guidance issued by FIG into account when deciding whether or not to award costs and, if so, how much of them to award.

Clause 22 deals with situations in which a worker has been dismissed and claims that this is related to the minimum wage. It provides that claims for unfair dismissal relating to the minimum wage would be dealt with under section 57A of the Employment Protection Ordinance. Section 57A would be inserted into the Employment Protection Ordinance by *clause 30*.

Clause 23 deals with complaints in the Summary Court by workers who believe that they have suffered other adverse consequences (detriment) because of the minimum wage and/or steps the worker has taken about the minimum wage.

- Under *clause 23(3)*, the time limit within which a complaint must be made would normally be 3 months – however, the Summary Court would be able to extend that time limit in certain circumstances.
- Under *clauses 23(4)* and *23(5)*, the Summary Court would be given a flexible power to make orders to remedy the detriment and/or to prevent further detriment from happening.
- Under *clause 23(6)(a)*, the Summary Court would also be able to award damages for a loss that the worker has actually suffered as a result of the detriment.
- Under *clause 23(6)(b)*, the Summary Court would also be able to order the employer to pay the worker damages of up to £5,000, but only if the employer’s conduct were to justify those damages.

Under *clause 28(2)*, the Summary Court would have to take guidance issued by FIG into account when deciding whether or not to award damages and, if so, how much to award.

- The normal rule in court proceedings is that whoever loses the case has to pay costs to the winner, but, under *clause 23(7)*, costs would not normally be awarded in minimum wage claims.

However, *clause 23(7)* would still allow the Summary Court to award costs against:

- a worker who has brought a case to court unreasonably; or
- against a worker or employer who has conducted the court case in an unreasonable way.

Under *clause 28(2)*, the Summary Court would have to take guidance issued by FIG into account when deciding whether or not to award costs and, if so, how much of them to award.

Part 10 – Reversal of burden of proof

Clause 24 deals with the burden of proof in minimum wage cases: it provides that someone bringing a minimum wage case in the Summary Court would not have to prove certain elements of the claim – instead, it would be for the employer to disprove them.

Part 11 – Appeals from decisions of Summary Court

Clause 25 provides that decisions of the Summary Court can be appealed to the Magistrate’s Court (but that there is no further appeal beyond the Magistrate’s Court).

Part 12 – Restrictions on contracting out

The effect of *clause 26* would be to prevent workers from contracting out of the right to a minimum wage for their eligible work and from contracting out of their other rights under the minimum wage legislation. Attempts to contract out would not be given any effect.

The only exception to that would be that, if a claim arises, it would be possible for that claim to be settled out of court. However, it would only be possible to settle specific claims that have actually arisen – it would not be possible to “settle” future or potential claims in advance.

Part 13 – Publicity, guidance and information for workers

Under *clause 27*, FIG would arrange for publicity about the minimum wage legislation.

Clause 28 would allow FIG to issue statutory guidance for employers and workers about the minimum wage legislation.

Under *clause 28(2)*, this guidance would not be binding but the Summary Court could take whether or not the guidance has been followed into account when dealing with minimum wage cases.

Under *clause 29*, employers would be required to provide their workers with information about the workers’ rights under the minimum wage legislation. However, it would be possible for employers to do this by providing workers with copies of the FIG guidance for workers.

Part 14 – Consequential amendments

Clause 30 would make a consequential amendment to the Employment Protection Ordinance to deal with claims for unfair dismissal relating to the minimum wage:

- It would insert a new section 57A into that Ordinance, under which it would be unfair dismissal to dismiss an employee because the employee is entitled to the minimum wage or because the employee has exercised rights in relation to the minimum wage,

- It would also insert cross-references to the new section 57A into sections 58 and 63 and the effect of these cross-references would be that:
 - selection for redundancy relating to the minimum wage would itself be unfair dismissal; and
 - the qualifying period for unfair dismissal claims would not apply to unfair dismissal relating to the minimum wage.

Clause 31 would allow for other consequential amendments to be made by order, if necessary. If this power has to be used, the Governor would normally have to act on the advice of Executive Council.

Part 15 – Transitional provisions

Clause 32 would allow for transitional provisions to be made by order. If this power is used, the Governor would normally have to act on the advice of Executive Council.

Part 16 – Application to Crown

Clause 33 is intended to make it clear that the minimum wage legislation applies to Crown as an employer in the same way as it does to other employers.

Paragraph 1 of Schedule 1 specifically provides that those employed by FIG and the UK Government are workers for the purposes of the minimum wage legislation.

However, not all work for FIG or the UK Government is eligible work (and *Schedule 2* deals with that).

Part 17 – Repeal

Clause 34 would repeal the Labour (Minimum Wage) Ordinance. That Ordinance dates from 1942, has no current practical effect and is not fit for purpose in the modern era.

It is also proposed to repeal another Ordinance dating from 1942, the Labour (Advisory Board) Ordinance, which (again) has no current practical effect and is not fit for purpose in the modern era. That Ordinance would be repealed by a separate Bill.

Schedule 1 – “Worker”: special cases

Schedule 1 deals with special cases in relation to the definition of “worker”. *Schedule 1* is described above in the context of *clause 5*.

Schedule 2 – “Eligible work”: special cases

Schedule 2 deals with special cases in relation to the definition of “eligible work”. *Schedule 1* is described above in the context of *clause 6*.

Minimum Wage Bill 2013

(No: of 2013)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – INTRODUCTION

1. Title
2. Commencement

PART 2 – INTERPRETATION

3. Interpretation: defined terms
4. Interpretation: “work”, etc
5. Interpretation: “worker” (with powers for Governor to amend Schedule 1 and to make subsidiary legislation about special cases)
6. Interpretation: “eligible work” (with powers for Governor to amend Schedule 2 and to make subsidiary legislation about special cases)
7. Interpretation: “pay reference period”

PART 3 – ENTITLEMENT TO MINIMUM WAGE

8. Entitlement to minimum wage for each pay reference period
9. Amount treated as having been paid in respect of minimum wage for pay reference period
10. Worker’s entitlement to additional payment if amount treated as having been paid less than minimum wage for pay reference period

PART 4 – MINIMUM WAGE RATES

11. Minimum wage rates
12. Minimum wage rates: duty on Governor to set initial rates by order
13. Minimum wage rates: duty to keep under review and power for Governor to adjust by order

PART 5 – CALCULATION OF HOURS WORKED

14. Duty on Governor to make regulations about calculation of hours worked

PART 6 – CALCULATION OF AMOUNTS TREATED AS HAVING BEEN PAID

15. Duty on Governor to make regulations about calculation of amounts treated as having been paid

PART 7 – RECORD KEEPING BY EMPLOYERS (AND WORKER'S RIGHTS TO ACCESS EMPLOYER'S RECORDS)

16. Records to be kept by employers

17. Worker's right of reasonable access to employer's minimum wage records

18. Dealing with refusal to allow worker access to records

PART 8 – WORKER'S RIGHT NOT TO SUFFER DETRIMENT RELATING TO MINIMUM WAGE

19. Worker's right not to suffer detriment relating to minimum wage

PART 9 – ENFORCEMENT BY WORKERS OF THEIR RIGHTS

20. Proceedings for additional payment if minimum wage not paid

21. Enforcement by worker of right of reasonable access to employer's records

22. Enforcement by worker of right not to be dismissed in relation to minimum wage

23. Enforcement by worker of right not to suffer detriment (other than dismissal) in relation to minimum wage

PART 10 – REVERSAL OF BURDEN OF PROOF

24. Reversal of burden of proof

PART 11 – APPEALS FROM DECISIONS OF SUMMARY COURT

25. Appeals from decisions of Summary Court

PART 12 – RESTRICTIONS ON CONTRACTING OUT

26. Restrictions on contracting out

PART 13 – PUBLICITY, GUIDANCE AND INFORMATION FOR WORKERS

27. Publicity

28. Guidance

29. Employers to provide workers with information about rights under the minimum wage legislation

PART 14 – CONSEQUENTIAL AMENDMENTS

30. Amendment of the Employment Protection Ordinance

31. Power to make further consequential amendments by order

PART 15 – TRANSITIONAL PROVISIONS

32. Power to make transitional provisions by order

PART 16 – APPLICATION TO CROWN

33. Application to Crown

PART 17 – REPEAL

34. Labour (Minimum Wage) Ordinance repealed

Schedule 1 – “Worker”: special cases

Schedule 2 – “Eligible work”: special cases

MINIMUM WAGE BILL 2013

(No: of 2013)

(assented to: 2013)

(commencement [see section 2])

(published: 2013)

A BILL

for

AN ORDINANCE

To provide for the introduction of a minimum wage to be paid to workers; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 INTRODUCTION

1. Title

This Ordinance is the Minimum Wage Ordinance 2013.

2. Commencement

(1) This Ordinance comes into force on a date appointed by the Governor in a notice published in the *Gazette*.

(2) The Governor may appoint different days for different provisions of the Ordinance to come into force.

PART 2 INTERPRETATION

3. Interpretation: defined terms

(1) In this Ordinance (and subsidiary legislation made under it) —

“contract” means an express or implied contract (and, if it is an express contract, whether it was made orally, in writing or in some other way);

“dismissal” has the same meaning as it does under section 53 of the Employment Protection Ordinance (Title 32.3);

“eligible work” has the meaning given by section [6];

“employer” —

(a) in relation to a worker, means the person for whom the worker is (or was) working under a relevant work contract; and

(b) is also to be interpreted in accordance with Schedule 1;

“minimum wage legislation” means —

(a) this Ordinance; and

(b) subsidiary legislation made under it;

“minimum wage rate” has the meaning given by section [11(1)];

“minimum wage rate for adults” has the meaning given by section [11(1)(a)];

“minimum wage rate for young persons” has the meaning given by section [11(1)(b)];

“pay reference period” has the meaning given by section [7];

“relevant work contract” means —

(a) a contract of service or apprenticeship; or

(b) a contract that is not a contract of service or apprenticeship but under which —

(i) an individual undertakes personally to do work for another party to the contract; and

(ii) the status of that other party under the contract is not that of a client or customer of a profession or business undertaking carried on by the individual;

“work” is to be interpreted in accordance with section [4]; and

“worker” is to be interpreted in accordance with section [5].

4. Interpretation: “work”, etc

Every reference in the minimum wage legislation to a person doing work also includes references to that person performing a service or performing services (and “work” and other related expressions are to be understood accordingly).

5. Interpretation: “worker” (with powers for Governor to amend Schedule 1 and to make subsidiary legislation about special cases)

(1) A person is a worker if —

(a) the person has entered into a relevant work contract;

(b) the person is working under a relevant work contract; or

(c) the person worked under a relevant work contract that has come to an end.

(2) A person may also be treated as being a worker (or treated as not being a worker) in accordance with —

(a) Schedule 1 (which deals with special cases relating to the definition of “worker”); or

(b) an order made under subsection (4).

(3) The Governor may amend Schedule 1 by order.

(4) The Governor may make one or more orders dealing with special cases relating to the definition of “worker”.

(5) An order made under subsection (3) or (4) may provide for the minimum wage legislation to apply in a modified way in a special case with which it deals.

6. Interpretation: “eligible work” (with powers for Governor to amend Schedule 2 and to make subsidiary legislation about special cases)

(1) Work is eligible work if —

(a) it is done by a worker;

(b) it is done under a relevant work contract; and

(c) it is done in the Falkland Islands.

(2) Work may also be treated as being eligible work (or treated as not being eligible) in accordance with —

(a) Schedule 2 (which deals with special cases relating to the definition of “eligible work”);
or

(b) an order made under subsection (4).

(3) The Governor may amend Schedule 2 by order.

(4) The Governor may make one or more orders dealing with special cases relating to the definition of “eligible work”.

(5) An order made under subsection (3) or (4) may provide for the minimum wage legislation to apply in a modified way in a special case with which it deals.

7. Interpretation: “pay reference period”

- (1) The minimum wage payable to a worker who has done eligible work is to be calculated for each pay reference period during which that worker does eligible work for an employer.
- (2) The normal pay reference period for worker is —
 - (a) a period of 1 month, unless —
 - (b) the worker is paid wages for a period that is shorter than 1 month, in which case that period is the pay reference period for that worker; or
- (3) A reference in the minimum wage legislation to a person being paid for a pay reference period is a reference to the person being paid by the person’s employer in respect of eligible work done by that person during that pay reference period (regardless of when that payment is made).

PART 3
ENTITLEMENT TO MINIMUM WAGE

8. Entitlement to minimum wage for each pay reference period

- (1) Workers aged 16 or over are entitled to at least a minimum wage for each pay reference period in which they do eligible work.
- (2) A worker’s minimum wage for a pay reference period is to be calculated using the formula —

$$M \times H$$

- (3) In the formula $M \times H$ —

“M” is the minimum wage rate that applies to that worker in accordance with section [11];
and

“H” —

- (a) is the number of hours (which need not be a whole number) of eligible work that the worker has done during the pay reference period; and
- (b) is to be calculated in accordance with regulations made under section [14].

9. Amount treated as having been paid in respect of minimum wage for pay reference period

The amount that a worker is treated as having been paid by an employer in respect of the minimum wage for a pay reference period —

- (a) is to be calculated in accordance with regulations made under section [15]; and

(b) must be greater than or equal to the worker's minimum wage for that pay reference period (calculated using the formula in section [8(2)]).

10. Worker's entitlement to additional payment if amount treated as having been paid less than minimum wage for pay reference period

(1) Subsection (2) applies if the amount that a worker is treated as having been paid in relation to the minimum wage for a pay reference period (calculated in accordance with regulations made under section [15]) is less than the minimum wage for that pay reference period.

(2) If this subsection applies, the employer must pay to the worker an amount which is equal to the difference between —

(a) the amount treated as having been paid to the worker in respect of the minimum wage for that pay reference period; and

(b) the worker's minimum wage for that pay reference period (calculated using the formula in section [8(2)]).

**PART 4
MINIMUM WAGE RATES**

11. Minimum wage rates

(1) There are two minimum wage rates for workers —

(a) the minimum wage rate for workers aged 18 or over ("the minimum wage rate for adults"); and

(b) the minimum wage rate for workers aged 16 or 17 ("the minimum wage rate for young persons").

(2) If a worker's 18th birthday takes place during a pay reference period —

(a) the minimum wage rate for young persons applies to that worker in relation to the eligible work done by that worker from the start of the period until the end of the day before the worker's birthday; and

(b) the minimum wage rate for adults applies to that worker in relation to the eligible work done by that worker from the start of the worker's 18th birthday until the end of the period.

12. Minimum wage rates: duty on Governor to set initial rates by order

The Governor must make an order setting the initial rates of —

(a) the minimum wage rate for adults; and

(b) the minimum wage rate for young persons.

13. Minimum wage rates: duty to keep under review and power for Governor to adjust by order

- (1) The minimum wage rates must be kept under review.
- (2) Following a review of the minimum wage rates, the Governor may make an order adjusting —
 - (a) the minimum wage rate for adults;
 - (b) the minimum wage rate for young persons; or
 - (c) both minimum wage rates.
- (3) No order adjusting either minimum wage rate (or both of them) may take effect until at least 3 months after it has been published in the *Gazette*.

**PART 5
CALCULATION OF HOURS WORKED**

14. Duty on Governor to make regulations about calculation of hours worked

The Governor must make regulations about how the number of hours of eligible work that a worker has done during a pay reference period is to be calculated.

**PART 6
CALCULATION OF AMOUNTS TREATED AS HAVING BEEN PAID**

15. Duty on Governor to make regulations about calculation of amounts treated as having been paid

The Governor must make regulations about how the amount treated as having been paid to a worker in respect of the minimum wage for a pay reference period is to be calculated.

**PART 7
RECORD KEEPING BY EMPLOYERS (AND WORKER'S RIGHTS TO ACCESS
EMPLOYER'S RECORDS)**

16. Records to be kept by employers

- (1) Every employer of one or more workers who do (or have done) eligible work must keep records that are adequate for the following purposes —
 - (a) establishing that the workers have been paid at least the minimum wage for their eligible work; and
 - (b) enabling workers to exercise their right to access those records under section [17].
- (2) The records that an employer must keep —

(a) may be kept —

(i) on paper;

(ii) by means of a computer; or

(iii) in some other way; but

(b) must be in a form which enables the information kept about a worker in respect of a pay reference period to be produced in a single document; and

(c) in relation to each pay reference period, must be kept by the employer for at least 6 years after the end of that pay reference period.

17. Worker's right of reasonable access to employer's minimum wage records

(1) Every worker has a right ("the right of reasonable access") of reasonable access to the records kept by the worker's employer under section [16] in order to confirm that the worker has been paid at least the minimum wage for each pay reference period.

(2) A worker may only exercise the right of reasonable access for the purpose of establishing whether or not the worker is being (or has been) paid at least the minimum wage for one or more pay reference periods.

(3) When exercising the right of reasonable access, the worker may —

(a) require the employer to produce the records that the employer has kept under section [16] to the extent that they relate to that worker;

(b) inspect and examine those records; and

(c) copy them (or part of them).

(4) The right of reasonable access may be exercised —

(a) by the worker alone; or

(b) by the worker accompanied by another person.

18. Dealing with refusal to allow worker access to records

(1) If the employer refuses to give the worker access to the records under section [17], the worker may give the employer a written notice ("a production notice") requesting the production of the employer's records kept under section [16] to the extent that they relate to that worker over a period specified in the production notice.

(2) If the worker intends to inspect and examine those records accompanied by another person, the production notice must contain a statement of that intention.

- (3) An employer may refuse a request made in a production notice if (in all of the circumstances) the request is unreasonable.
- (4) If the employer intends to refuse a request made in a production notice, the employer must give the worker a written notice (“a refusal notice”) —
 - (a) indicating that the request is being refused; and
 - (b) explaining why the employer considers that the request is unreasonable.
- (5) Within 7 days of receiving a production notice from a worker, the employer must either —
 - (a) give the worker a refusal notice; or
 - (b) give the worker reasonable written notice of a place and time at which the records will be produced to the worker (or to the worker and the person accompanying the worker).
- (6) The place where the records are produced must be —
 - (a) the worker’s place of work; or
 - (b) another place at which it is reasonable (in all the circumstances) for the worker to attend to inspect the relevant records; or
 - (c) another place that has agreed between the worker and the employer after the production notice was given to the employer.
- (7) The records must be produced either —
 - (a) no later than 14 days after the date on which the employer receives the production notice; or
 - (b) at a later time that has been agreed between the worker and the employer after the production notice was given to the employer.

PART 8
WORKER’S RIGHT NOT TO SUFFER DETRIMENT RELATING TO MINIMUM WAGE

19. Worker’s right not to suffer detriment relating to minimum wage

- (1) A worker has the right not to be subjected by the worker’s employer to detriment on the ground that—
 - (a) the employee is entitled to (or will or might become entitled to) —

- (i) the minimum wage;
- (ii) a particular rate of minimum wage; or

(b) action was taken (or was proposed to be taken) by (or on behalf of) the worker with a view to enforcing (or otherwise securing the benefit of) one or more of the worker's rights under the minimum wage legislation.

(2) For the purposes of subsection (1) —

- (a) “detriment” includes dismissal;
- (b) “detriment” may also include either or both of the following —

- (i) one or more acts;
- (ii) one or more deliberate failures to act; and

(c) in the case of acts (or deliberate failures to act), it is immaterial whether they were carried out —

- (i) by the employer;
- (ii) by another (or others) on the employer's behalf;
- (iii) by another (or others) at the employer's instigation.

(3) For the purposes of subsection (1)(b) —

(a) “action” includes (but is not limited to) —

- (i) bringing proceedings before the Summary Court under section [20];
- (ii) making a complaint to the Summary Court under section [21] or [23]; or
- (iii) continuing proceedings or a complaint once made or brought; and

(b) it is immaterial —

- (i) whether or not the worker has (or had) a right; or
- (ii) whether or not that right is being, has been or was infringed; but

(c) the claim to the right (and, if applicable, the claim that it has been infringed) must be (or must have been) made in good faith.

PART 9
ENFORCEMENT BY WORKERS OF THEIR RIGHTS

20. Proceedings for additional payment if minimum wage not paid

(1) Subsection (2) applies if a worker believes that the worker's employer must make one or more additional payments to the worker under section [10(2)].

(2) If this subsection applies, the worker may bring proceedings in the Summary Court.

(3) If the Summary Court finds that the worker is entitled to one or more additional payments under section [10(2)] —

(a) it must order that the employer pays the worker the additional payments to which the worker is entitled (but not in relation to pay reference periods that ended more than 6 years before the proceedings were brought); and

(b) it may order that the employer pays the worker —

(i) interest on those additional payments as if they were qualifying debts for the purposes of the Interest on Debts Ordinance (Title 20.3); and

(ii) if it considers that the employer's conduct warrants it, additional damages of up to £5,000 reflecting that conduct.

(4) The Summary Court may only order that one party to proceedings under this section pays the other's costs in those proceedings (or a proportion of those costs) if the court considers that the party has acted unreasonably in bringing or conducting those proceedings.

21. Enforcement by worker of right of reasonable access to employer's records

(1) Subsection (2) applies to a worker if —

(a) the worker has given a production notice to an employer under section [18(1)]; and

(b) one or more of the following apply —

(i) the employer has given a refusal notice to the worker under section [18(4)] and the worker disagrees with it;

(ii) the employer has not given the worker notice under section [18(5)] of a reasonable place and time at which the records will be produced;

(iii) the worker does not agree that the place and time specified by an employer in a notice given under section [18(5)] is reasonable;

(iv) the employer does not produce the records in accordance with a notice given under section [18(5)];

(v) the worker believes that the records produced by the employer are incomplete or inaccurate (or both);

(vi) the worker believes that the employer has (in some other way) done either or both of the following things —

(aa) failed to comply with the obligation to keep records under section [16];

(bb) breached the worker's right of reasonable access under section [17].

(2) A worker to whom this subsection applies may make a complaint to the Summary Court.

(3) The Summary Court will not entertain a complaint unless it is presented to the court either —

(a) within 3 months of when the production notice was given to the employer; or

(b) after a longer period, if the Summary Court considers that it is reasonable (in all of the circumstances of the case) that the complaint was not brought until after that longer period.

(4) If the Summary Court finds that the complaint is justified, it may make an order against the employer requiring the employer to produce the records to the worker (or to the worker accompanied by another person) at a place and time ordered by the court.

(5) The Summary Court may also order that the employer pays the worker —

(a) damages compensating the worker for any loss that the worker has suffered; and

(b) if it considers that the employer's conduct warrants it, additional damages of up to £5,000 reflecting that conduct.

(6) The Summary Court may only order that one party to proceedings under this section pays the other's costs in those proceedings (or a proportion of those costs) if the court considers that the party has acted unreasonably in bringing or conducting those proceedings.

22. Enforcement by worker of right not to be dismissed in relation to minimum wage

(1) Subsection (2) applies to a worker who —

(a) was employed under a contract of service or apprenticeship;

(b) has been dismissed; and

(c) believes that the dismissal breached the worker's right under section [19] not to suffer detriment relating to the minimum wage.

(2) A worker to whom this subsection applies may bring proceedings for unfair dismissal under the Employment Protection Ordinance (Title 32.3) and section 57A of that Ordinance will apply in those proceedings.

23. Enforcement by worker of right not to suffer detriment (other than dismissal) in relation to minimum wage

(1) Subsection (2) applies to a worker who believes that —

(a) the worker is suffering (or has suffered) detriment (other than dismissal from employment under a contract of service or apprenticeship); and

(b) the detriment breaches (or breached) the worker's right under section [19] not to suffer detriment relation to the minimum wage.

(2) A worker to whom this subsection applies may make a complaint to the Summary Court.

(3) The Summary Court will not entertain a complaint unless it is presented to the court either —

(a) within 3 months of the last act or deliberate failure to act specified in the complaint; or

(b) after a longer period, if the Summary Court considers that it is reasonable (in all of the circumstances of the case) that the complaint was not brought until after that longer period.

(4) If the Summary Court finds that the complaint is justified, it may make an order against the employer requiring the employer —

(a) to do one or more things;

(b) to refrain from doing one or more things; or

(c) to do one or more things and to refrain from doing one or more other things.

(5) The purpose of an order against the employer must be to —

(a) remedy the detriment (as far as possible);

(b) to prevent (as far as possible) further detriment; or

(c) to do both of those things.

(6) The Summary Court may also order that the employer pays the worker —

(a) damages compensating the worker for any loss that the worker has suffered; and

(b) if it considers that the employer's conduct warrants it, additional damages of up to £5,000 reflecting that conduct.

(7) The Summary Court may only order that one party to proceedings under this section pays the other's costs in those proceedings (or a proportion of those costs) if the court considers that the party has acted unreasonably in bringing or conducting those proceedings.

PART 10 REVERSAL OF BURDEN OF PROOF

24. Reversal of burden of proof

(1) This section applies in relation to —

(a) proceedings before the Summary Court under section [20]; and

(b) complaints made to the Summary Court under section [21] or [23].

(2) If this section applies and an issue arises as to whether or not an individual is (or was) a worker, it is to be presumed that the individual is (or was) a worker unless the contrary is established.

(3) If this section applies and an issue arises as to whether or not a contract is (or was) a relevant work contract, it is to be presumed that the contract is (or was) a relevant work contract unless the contrary is established.

(4) If this section applies and an issue arises as to whether or not work is (or was) eligible work, it is to be presumed that the work is (or was) eligible work unless the contrary is established.

PART 11 APPEALS FROM DECISIONS OF SUMMARY COURT

25. Appeals from decisions of Summary Court

(1) An appeal may be taken to the Magistrate's Court by either party against a decision of the Summary Court —

(a) in proceedings under section [20];

(b) following a complaint under section [21] or [23].

(2) No further appeal may be brought against a decision of the Magistrate's Court on an appeal under subsection (1).

PART 12 RESTRICTIONS ON CONTRACTING OUT

26. Restrictions on contracting out

(1) Subsection (3) applies to a contract or agreement (or to a provision in a contract or agreement) to the extent that it purports —

(a) to exclude or limit the operation of one or more provisions of the minimum wage legislation; or

(b) to preclude a person from —

(i) bringing proceedings before the Summary Court under section [20];

(ii) making a complaint to the Summary Court under section [21] or [23]; or

(iii) continuing proceedings or a complaint once made or brought.

(2) In subsection (1), “contract or agreement” is capable of applying to a contract or agreement even if it is not a relevant work contract.

(3) To the extent that this subsection applies to a provision in a contract or agreement —

(a) that provision is only valid if that it is covered by the exception in subsection (4);

(b) if it is valid at all, it is only valid as far as it is covered by the exception; and

(c) apart from that, it is void.

(4) Subsection (3) does not apply to an agreement —

(a) if (but only if) it is an agreement made in writing to refrain from —

(i) bringing proceedings before the Summary Court under section [20];

(ii) making a complaint to the Summary Court under section [21] or [23]; or

(iii) continuing an existing set of proceedings (or an existing complaint);

(b) to the extent (and only to the extent) that it relates to —

(i) a specific claim;

(ii) a specific set of proceedings; or

(iii) a specific complaint.

PART 13
PUBLICITY, GUIDANCE AND INFORMATION FOR WORKERS

27. Publicity

The Falkland Islands Government will arrange for publicity about the minimum wage legislation.

28. Guidance

(1) The Falkland Islands Government may issue —

(a) guidance for employers about how they are to comply with their obligations under the minimum wage legislation; and

(b) guidance for workers about their rights under the minimum wage legislation.

(2) If guidance has been issued —

(a) it does not override the provisions of the minimum wage legislation; but

(b) the Summary Court (and the Magistrate's Court when dealing with an appeal) must take into account whether the parties to proceedings under section [20] (or a complaint under section [21] or [23]) have (or have not) followed that guidance when —

(i) determining a claim or complaint;

(ii) determining whether or not to award additional damages against the employer (and, if so, how much those additional damages should be); and

(iii) determining whether or not to award costs against either party (and, if so, what proportion of the costs should be awarded).

29. Employers to provide workers with information about rights under the minimum wage legislation

(1) Every employer of one or more workers who do (or have been engaged to do) eligible work must provide those workers with adequate information about —

(a) their entitlement to be paid the minimum wage for their eligible work;

(b) their rights to access their employers' records (and how they can exercise that right);

(c) their rights not to suffer detriment; and

(d) how they can (if need be) enforce their rights under the minimum wage legislation.

(2) If the Falkland Islands Government has produced guidance for workers about their rights under the minimum wage legislation, employers may comply with their obligation to provide information to their workers by ensuring that copies of that guidance are made available to them.

PART 14

CONSEQUENTIAL AMENDMENTS

30. Amendment of the Employment Protection Ordinance

(1) This section amends the Employment Protection Ordinance.

(2) The following section is inserted after section 57 —

“57A. Dismissal relating to minimum wage

(1) An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that —

(a) the employee is entitled to (or will or might become entitled to) —

(i) the minimum wage;

(ii) a particular rate of minimum wage; or

(b) action was taken (or was proposed to be taken) by (or on behalf of) the employee with a view to enforcing (or otherwise securing the benefit of) one or more of the employee’s rights under the Minimum Wage Ordinance (No ?? of 2013).

(2) For the purposes of subsection (1)(b) —

(a) “action” includes (but is not limited to) —

(i) bringing proceedings before the Summary Court under section [20] of the Minimum Wage Ordinance;

(ii) making a complaint to the Summary Court under section [21] or [23] of that Ordinance; or

(iii) continuing proceedings or a complaint once made or brought.

(b) it is immaterial —

(i) whether or not the employee has (or had) the right; or

(ii) whether or not that right is being, has been or was infringed; but

(c) the claim to the right (and, if applicable, the claim that it has been infringed) must be (or must have been) made in good faith.”

(3) Section 58(a) is amended by adding “or section 57A(1)”.

(4) Section 63(3) is amended by adding “or section 57A(1)”.

31. Power to make further consequential amendments by order

(1) The Governor may by order make further provision consequential on this Ordinance (or one or more of its provisions).

(2) An order made under subsection (1) may do one or more of the following things —

- (a) amend or repeal written laws of the Falkland Islands;
- (b) provide for United Kingdom legislation to apply in the Falkland Islands (with or without modifications);
- (c) modify the application in the Falkland Islands of United Kingdom legislation that already applies in the Falkland Islands;
- (d) provide that specific provisions of United Kingdom legislation no longer apply in the Falkland Islands.

**PART 15
TRANSITIONAL PROVISIONS**

32. Power to make transitional provisions by order

The Governor may by order make transitional provision in connection with this Ordinance (or one or more of its provisions).

**PART 16
APPLICATION TO CROWN**

33. Application to Crown

The minimum wage legislation applies to (and binds) the Crown in its capacity as an employer.

**PART 17
REPEAL**

34. Labour (Minimum Wage) Ordinance repealed

The Labour (Minimum Wage) Ordinance (Title 32.5) is repealed.

**SCHEDULE 1
“WORKER”: SPECIAL CASES**

1. Employment by FIG or UK Government (Crown employment)

(1) A person who is employed by the Falkland Islands Government or the United Kingdom Government under a relevant work contract is a worker.

2. Agency workers

(1) Sub-paragraph (2) applies whenever an individual (“the agency worker”) —

(a) is supplied by one person (“the agent”) to do work for another person (“the principal”) under a contract or arrangement made between the agent and the principal; and

(b) is not a party to a contract under which the individual undertakes to do the work for another party to the contract whose status under the contract is that of a client or customer of a profession or business undertaking carried on by the individual; but

(c) would not otherwise be a worker in relation to that work (because there is no relevant work contract between the individual and the principal).

(2) If this sub-paragraph applies, then (for the purposes of the minimum wage legislation) —

(a) the agency worker is to be treated as a worker in relation to that work;

(b) the agent and the principal are to be treated as jointly being the agency worker’s employer in relation to that work.

3. Employers who are themselves employed

(1) Subsection (2) applies if —

(a) the worker is doing work for a person who is not the worker’s immediate employer; and

(a) the worker’s immediate employer is in the employment of that person, and

(2) If this subsection applies, then (for the purposes of the minimum wage legislation) the worker is to be treated as being employed by that person when doing that work (as well as by the worker’s immediate employer).

4. Home workers

(1) Sub-paragraph (2) applies whenever —

(a) an individual (“the home worker”) contracts with a person (for the purposes of that person’s business) for work to be done in a place that is not under the control or management of that person; and

(b) the status of that person under the contract is not that of a client or customer of a profession or business undertaking carried on by the home worker; but

(c) the contract is not a relevant work contract because it does not specifically require the home worker to do the work personally.

(2) If this sub-paragraph applies, then (for the purposes of the minimum wage legislation) —

(a) the home worker is to be treated as a worker in relation to that work;

(b) the person with whom the home worker has contracted for the work to be done is to be treated as being the home worker's employer in relation to that work.

SCHEDULE 2 **“ELIGIBLE WORK”: SPECIAL CASES**

1. Territorial scope of “eligible work”

(1) Work done outside the Falkland Islands is not eligible work, unless either or both of the following apply —

(a) it is done by a worker who is primarily employed in the Falkland Islands (and who is working outside the Falkland Islands on a temporary basis);

(b) the worker is working in Falkland Islands controlled waters —

(i) in relation to exploring for (or exploiting) minerals in those waters; or

(ii) in support of that exploration (or exploitation).

(2) In sub-paragraph (1) —

(a) “Falkland Islands” includes the internal and territorial waters of the Falkland Islands; and

(b) “controlled waters”, “explore” and “exploit” have the same meaning as they do in the Offshore Minerals Ordinance (Title 53.1).

2. Work done on board vessels

Work is not eligible work (even if is done in the internal or territorial waters of the Falkland Islands) if it is done on board —

(a) a fishing vessel; or

(b) another vessel, but only if —

(i) it normally operates outside the internal and territorial waters of the Falkland Islands; and

(ii) the work is not covered by paragraph 1(b).

3. Service in UK armed forces, FIDF and cadet forces, etc

(1) None of the following are eligible work —

(a) service in —

- (i) the armed forces of the United Kingdom (whether that service is in the regular forces or the reserve forces); or
 - (ii) the Falkland Islands Defence Force;
 - (iii) the cadet forces; and
- (b) activities (whether military or otherwise) undertaken in the course of that service;
 - (c) activities undertaken as a volunteer assisting the cadet forces.

4. FIG-funded schemes and programmes

- (1) Work is not eligible work if it is done as part of a scheme or programme which —
 - (a) is funded by the Falkland Islands Government; and
 - (b) is intended to provide either or both of the following —
 - (i) training (other than an apprenticeship);
 - (ii) employment support.
- (2) In particular, work is not eligible work if it is done as part of either (or both) of the following schemes —
 - (a) the programme known as Entry to Employment (or E2E);
 - (b) the programme known as the Employment Programme.

5. Work experience

Work is not eligible work if —

- (a) it is done as part of a work experience scheme by a person who is undertaking —
 - (i) compulsory education;
 - (ii) a transition programme under the Education Ordinance (Title 29.1); or
 - (iii) further or higher education; and
- (b) the placement in which the work is done does not (and is not expected to) last for more than 1 year.

6. Voluntary work

- (1) Work is not eligible work if it is voluntary work done for (or on behalf of) —

- (a) a charity;
 - (b) a voluntary organisation;
 - (c) an associated fund-raising body; or
 - (d) a statutory body.
- (2) Work is voluntary work if the person doing that work has no entitlement —
- (a) to be paid for it (or in connection with it); or
 - (b) to benefit in kind from it (or in connection with it).
- (3) When determining whether a person has an entitlement to be paid for work that would otherwise be voluntary work, the following are to be ignored —
- (a) payment that —
 - (i) is intended to reimburse some or all of the person's expenses in relation to doing the work;
 - (ii) does not exceed —
 - (aa) the actual amount of those expenses; or
 - (bb) a reasonable estimate of what they are likely to be (or have been).
 - (b) the provision of subsistence or accommodation (or both of them) that is reasonable in the circumstances of the work being done;
 - (c) training that is provided for the purpose of carrying out the work that the person is (or will be) doing;
 - (d) training that the person necessarily acquires in the course of doing the work;
 - (e) one or more payments that are made to the person —
 - (i) solely for the purpose of providing the person with a means of subsistence; and
 - (ii) as a result of arrangements made between —
 - (aa) a charity, acting in pursuance of its charitable purposes; and
 - (bb) the charity, organisation or body for which (or on behalf of which) the work is done.

(4) In this paragraph —

“associated fund-raising body” means a body of persons the profits of which are applied wholly for the purposes of a charity or a voluntary organisation;

“charity” means a body of persons (or the trustees of a trust) established for charitable purposes only;

“statutory body” means a body established by or under —

- (a) a written law of the Falkland Islands;
- (b) legislation that applies in the United Kingdom (or part of it);

“voluntary organisation” means a body of persons (or the trustees of a trust) which —

- (a) is not a charity; but
- (b) is established for one or more of the following purposes (and for no other purposes) —
 - (i) charitable purposes (whether or not those purposes are charitable in law);
 - (ii) benevolent purposes;
 - (iii) philanthropic purposes.

7. Religious and other communities: resident workers

(1) Work is not eligible work if it is done —

- (a) for a community of a kind described in sub-paragraph (2); and
- (b) by a member of that community who lives as part of it.

(2) Sub-paragraph (1) applies to a community if —

- (a) it is a charity or is established by a charity;
- (b) the purpose of the community (or one of its purposes) is to practise or advance a belief of a religious or similar nature, and
- (c) all or some of its members live together for that purpose.

8. Prisoners

(1) Work is not eligible work if —

- (a) it is done by a person who is —
 - (i) detained in a prison; or
 - (ii) on temporary release from a prison; and
- (b) it is done in accordance with —
 - (i) prison legislation;
 - (ii) requirements imposed under prison legislation or as part of the prison regime; or
 - (iii) arrangements made under prison legislation or as part of the prison regime.

(2) In sub-paragraph (1) —

“prison” includes —

- (a) a young offender institution; or
- (b) another institution, establishment or place designated under prison legislation; and

“prison legislation” means —

- (a) the Prison Ordinance (Title 60.1);
- (b) subsidiary legislation made under the Prison Ordinance; and
- (c) orders and instructions made (or issued) under the Prison Ordinance (or subsidiary legislation made under it).

9. Unpaid work under community service order

Work is not eligible work if it is unpaid work that a person is required to do as punishment for a criminal offence under an order made by a court.

10. Family members (and others living and working as part of a family)

(1) Work is not eligible work if —

- (a) the person resides in the family home of the employer for whom that person works;
- (b) the person is either —
 - (i) a member of the employer’s family; or
 - (ii) treated as if the person were a member of the employer’s family, including (in particular) in relation to —

- (aa) the provision of accommodation and meals; and
- (bb) the sharing of tasks and leisure activities;
- (c) if the person is not a member of the employer's family (but is treated as if the person were), the person —
 - (i) does not have to pay the employer (or anyone else) for the provision of living accommodation or meals; and
 - (ii) no deductions from payments to that person are made by the employer (or anyone else) for the provision of living accommodation or meals; and
- (d) the work relates to the home or life of the family.

OBJECTS AND REASONS

This Bill would implement proposals for a minimum wage for the Falkland Islands.

A detailed explanation of the provisions of the Bill is set out in an Explanatory Memorandum which is published with it in the *Gazette*.

The Bill would also repeal the Labour (Minimum Wage) Ordinance (Title 32.4), which dates from 1942. That Ordinance has no current effect and has long since ceased to be fit for purpose.

SUBSIDIARY LEGISLATION

EMPLOYMENT

Minimum Wage (Initial Rates) Order 2013

S. R. & O. No. of 2013

Made: 2013

Published: 2013

Coming into force: *see article 2*

I make this order under section [12] of the Minimum Wage Ordinance (No ?? of 2013) on the advice of Executive Council.

1. Title

This order is Minimum Wage (Initial Rates) Order 2013.

2. Commencement

This order comes into force on a day appointed by the Governor in a notice published in the *Gazette*.

3. Minimum wage rate for adults

The minimum wage rate for adults is £5.05 per hour.

4. Minimum wage rate for young persons

The minimum wage rate for young persons is £3.10 per hour.

Made [] 2013

N.R. Haywood,
Governor.

EXPLANATORY NOTE

(not part of the order)

Section [8(2)] of the Minimum Wage Ordinance (No ?? of 2013) provides that the minimum wage that a worker must be paid for a pay reference period is to be calculated using the minimum wage rate for that worker.

Section [11(1)] provides that there are two different minimum wage rates:

- (a) the minimum wage rate for eligible workers aged 18 or over (“the minimum wage rate for adults”); and
- (b) the minimum wage rate for eligible workers aged 16 or 17 (“the minimum wage rate for young persons”).

Section [11(2)] deals with the situation in which a worker’s 18th birthday falls during a pay reference period: the minimum wage rate for young persons applies until end of the day before the worker’s 18th birthday; and the minimum wage for adults applies from the start of the worker’s 18th birthday.

Under section [12], the Governor has to make an order setting the initial rates of both minimum wage rates and this order satisfies that requirement.

The initial minimum wage rate for adults (ie for workers aged 18 over) is £5.05 per hour.

The initial minimum wage rate for young persons (ie for workers aged 16 and 17) is £3.10 per hour.

SUBSIDIARY LEGISLATION

EMPLOYMENT

Minimum Wage (Calculation of Hours Worked) Regulations 2013

S. R. & O. No. of 2013

Made: 2013
Published: 2013
Coming into force: see regulation 2

I make these regulations under section [14] of the Minimum Wage Ordinance (No ?? of 2013) on the advice of Executive Council.

1. Title

These regulations are the Minimum Wage (Calculation of Hours Worked) Regulations 2013.

2. Commencement

These regulations come into force on a day appointed by the Governor in a notice published in the *Gazette*.

3. Interpretation

In these regulations, a reference to a number of hours need not be to a whole number of hours.

4. Hours of eligible work

(1) This regulation applies for the purposes of calculating “H” for the purposes of the formula “M × H” in section [8(2)] of the Minimum Wage Ordinance.

(2) The number of hours of eligible work that the worker has done for an employer during a pay reference period is the total number of hours during that pay reference period during which the worker was —

- (a) doing eligible work for the employer; or
- (b) undertaking training under a relevant work contract with the employer; or
- (c) travelling in the course of eligible work for the employer.

(3) The number of hours of eligible work that the worker has done for an employer during a pay reference period does not include hours during which the worker is travelling between the

worker's home and place of work, unless that travel forms part of the worker's duties for the employer.

Made [] 2013

N.R. Haywood,
Governor.

EXPLANATORY NOTE
(not part of the regulations)

Under section [14] of the Minimum Wage Ordinance (No ?? of 2013), the Governor has to make regulations about how to calculate the number of hours of eligible work that a worker has done during a pay reference period.

These regulations provide that hours spent working, training and travelling (in the course of work) are hours of eligible work that count towards the calculation of H in the formula " $M \times H$ " which is used to calculate a worker's minimum wage for a pay reference period.

Hours spent travelling between home and work are only included in the calculation if that travel forms part of the worker's duties.

SUBSIDIARY LEGISLATION

EMPLOYMENT

Minimum Wage (Calculation of Amount Paid) Regulations 2013

S. R. & O. No. of 2013

Made: 2013
Published: 2013
Coming into force: see regulation 2

I make these regulations under section [15] of the Minimum Wage Ordinance (No ?? of 2013) on the advice of Executive Council.

1. Title

These regulations are the Minimum Wage (Calculation of Amount Paid) Regulations 2013.

2. Commencement

These regulations come into force on a day appointed by the Governor in a notice published in the *Gazette*.

3. Interpretation

In these regulations —

“worker’s gross earnings” means, in relation to a pay reference period, the gross amount earned by the worker for eligible work done during the pay reference period (before any deductions are made); and

“worker’s net pay” means, in relation to a pay reference period, the net amount actually paid to the worker by the employer in respect of the eligible work done during the pay reference period.

4. Calculation of amount paid in respect of minimum wage for pay reference period

(1) The amount treated as having been paid to a worker in respect of the minimum wage for eligible work done during a pay reference period is to be calculated using the formula —

$$(N - X) + D + A$$

(2) In the formula “(N – X) + D + A” —

“N” means the worker’s net pay for the pay reference period;

“X” means payments of a kind listed in regulation 5 (payments that are excluded from the calculation of the amount treated as having been paid to a worker in respect of the minimum wage for eligible work done during a pay reference period);

“D” means the total of amounts that —

- (a) have been deducted from the worker’s gross earning for the pay reference period; and
- (b) are of a kind listed in regulation 6.

“A” means either —

- (a) if no deduction has been made from the worker’s gross earnings in respect of board or accommodation provided to the worker, zero; or
- (b) if a deduction has been made from the worker’s gross earnings in respect of board and accommodation provided to the worker, either —
 - (i) 50% of the amount of that deduction; or
 - (ii) if the result of the calculation in (i) would exceed the equivalent of £90.60 per week, an amount equivalent to £90.60 per week.

5. Excluded payments (“X”)

The following payments are excluded from the calculation of amounts treated as having been paid to a worker in respect of the minimum wage for eligible work done during a pay reference period (and are included in the amount “X” in the formulae in regulations 4(1) and 6(1)(a)) —

- (a) amounts paid by an employer in respect of tips and gratuities received (whether by the worker or a group of workers of which the worker is a member);
- (b) advances of wages or salary to which the worker will (or is expected to) become entitled;
- (c) payments made by way of loan;
- (d) payments made under a staff suggestion scheme;
- (e) additional amounts (in excess of the normal rate) paid for working —
 - (i) overtime;
 - (ii) on a shift basis;
 - (iii) at unsocial hours; or
 - (iv) in dangerous or dirty conditions;

- (f) amounts paid as reimbursement for expenses incurred by the worker —
 - (i) in the course of the worker’s duties for the employer;
 - (ii) for one or more of the following that the worker requires (or is required) to have or use in the course of the worker’s duties for the employer
 - (aa) uniform;
 - (bb) protective clothing;
 - (cc) tools;
 - (dd) equipment; or
 - (iii) in relation to benefits in kind to which the worker is entitled;
- (g) payments made for travel to and from the Falkland Islands at the beginning and end of the employment of a worker recruited from outside the Falkland Islands;
- (h) redundancy payments; and
- (i) other severance payments made in connection with the termination of an employment (including payments made in lieu of notice).

6. Allowable deductions (“D”)

(1) The following amounts deducted from the gross amount earned by the worker when calculating the worker’s net pay are to be treated as if they were amounts that had been paid to the worker in respect of the minimum wage for eligible work done during a pay reference period (and are included in the amount “D” in the formula in regulation 4(1)) —

- (a) amounts deducted under the Payments on Account of Tax (Employees' Deductions) Regulations (Title 69.1.3), but only in relation to the amount produced by the formula —

$$G - X$$

- (b) amounts deducted in respect of the worker’s employees’ contributions under section 10 of the Retirement Pensions Ordinance (Title 65.2);
- (c) amount deducted to repay one or more of the following —
 - (i) advances of wages or salary made to the worker;
 - (ii) accidental overpayments of wages or salary made to the worker;

(iii) loans made to the worker;

(d) amounts deducted in respect of the worker's conduct or work for which the worker is contractually liable (whether the worker is liable solely or jointly with others);

(e) amounts deducted in respect of the payment by the employer on the worker's behalf of charges for which the worker is liable under section 30 of the Stanley Rates Ordinance (Title 66.1);

(f) amounts deducted at the worker's voluntary direction in relation to either or both of the following —

(i) pension contributions;

(ii) contributions to a provident fund (or savings scheme).

(2) In the formula "G – X" —

"G" means the worker's gross earnings; and

"X" means payments of a kind listed in regulation 5 (payments that are excluded from the calculation of the amount treated as having been paid to a worker in respect of the minimum wage for eligible work done during a pay reference period).

Made [] 2013

N.R. Haywood,
Governor.

EXPLANATORY NOTE
(not part of the regulations)

Under section [15] of the Minimum Wage Ordinance (No ?? of 2013), the Governor has to make regulations about how to calculate the amount that a worker is treated as having been paid in respect of a pay reference period.

Under section [8], a worker is entitled to a minimum wage for each pay reference period (calculated using a formula in section [8(2)]).

Under section [9], the amount that a worker is treated as having been paid (calculated using these regulations) must be at least as much as the minimum wage. (If it is not, the worker's employer must make an additional payment to the worker under section [10].)

The amount that a worker is treated as having been paid is calculated using a formula:

$$(N - X) + D + A$$

As a guide, the calculation is made in the following stages:

Stage 1

The starting point is the worker's net pay for the pay reference period – that is the amount actually received by the worker (in cash or by cheque or bank transfer).

That amount is N in the formula.

(The value of benefits in kind does not count at all at this stage and the only benefit in kind that counts at all is board and accommodation, which counts to some extent at *stage 5*.)

Stage 2

Some payments made to the worker are excluded payments that do not count towards payment of the minimum wage.

The kinds of payments that are excluded are listed in *regulation 5*. The excluded payments include:

- payments that come from tips and gratuities,
- payment advances and loans,
- certain premiums and allowances over the normal rate for a job;
- amounts paid to reimburse the worker;
- travel to and from the Falkland Islands for workers brought in from outside;
- redundancy payments, severance payments and payments made in lieu of notice.

The amounts of these payments are added up and the total amount is X in the formula.

Stage 3

X is subtracted from N to produce (N – X).

Stage 4

The minimum wage rate for a worker is a gross hourly rate and, as well as some payments to workers being excluded for minimum wage purposes, some deductions have to be added back for the purposes of the minimum wage.

The kinds of deductions that have to be added back are listed in *regulation 6*.

The most important deductions that have to be added back are:

- deductions made under the POAT (Payments on Account of Tax) system (which cover income tax and Medical Services Tax), but the excluded payments that were dealt with at *Stage 2* have to be excluded for this calculation as well.
- deductions of employee Retirement Pension Contributions (RPCs).

Other deductions that have to be added back include:

- repayments of advances, overpayments and loans;
- amounts deducted for reasons such as shortages and damages;
- payments of the FIG service charge for properties in Stanley;
- voluntary contributions to pension schemes, provident funds and savings schemes.

The amounts of these deductions are added up and the total amount is D in the formula.

Stage 5

If a worker is provided with board and accommodation and deductions are made to pay for that, some of that can also be added back for the purposes of the minimum wage – this is the only benefit in kind that counts for minimum wage purposes.

Only 50% of the amount deducted for board and accommodation can be added back and the maximum amount that can be added back is £90.60 per week (or the pro-rated equivalent for pay reference periods longer or shorter than a week).

The amount that can be added back at this stage is A in the formula.

Stage 6

The following amounts are added together to arrive at the amount that a worker is treated as having been paid in respect of the minimum wage for a pay reference period:

- From *stage 3*, (N – X)
- From *stage 4*, D
- From *stage 5*, A

The total of these three amounts is the amount that the worker is treated as having been paid in respect of the minimum wage for a pay reference period.

Under section [9(b)] of the Minimum Wage Ordinance, that amount must be greater than or equal to the worker's minimum wage for the pay reference period.

If it is less, an additional payment is due under section [10].

Labour Advisory Board (Repeal) Bill 2013

(No: of 2013)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Labour (Advisory Board) Ordinance repealed

LABOUR ADVISORY BOARD (REPEAL) BILL 2013

(No: of 2013)

(assented to: 2013)

(commencement [see section 2])

(published: 2013)

A BILL

for

AN ORDINANCE

To repeal the Labour (Advisory Board) Ordinance (Title 32.4).

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Labour (Advisory Board) (Repeal) Ordinance 2013.

2. Commencement

This Ordinance comes into force when it is published in the *Gazette*.

3. Labour (Advisory Board) Ordinance repealed

The Labour (Advisory Board) Ordinance is repealed.

OBJECTS AND REASONS

This Bill would repeal the Labour (Advisory Board) Ordinance (Title 32.4), which dates from 1942. It has long since been superseded in practice and is no longer fit for purpose in the modern era.