

MINIMUM WAGE ACT 2001

(Chapter 25)

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AN ACT

**to make provision for and in connection with a minimum wage; to amend the
Agricultural Wages Act 1952; and for connected purposes.**

Entitlement to the minimum wage

1 Workers to be paid at least the minimum wage

(1) A person who qualifies for the minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the minimum wage.

(2) A person qualifies for the minimum wage if he is an individual who-

- (a) is a worker;
- (b) is working, or ordinarily works, in the Island under his contract; and
- (c) has ceased to be of compulsory school age.

(3) The minimum wage shall be such single hourly rate as the Department of Trade and Industry ('the Department') and the Treasury, acting jointly, may from time to time prescribe by regulations.

(4) The Department and the Treasury-

- (a) shall consult the Minimum Wage Committee established by section 2 before making any regulations under subsection (3); and
- (b) shall consider any recommendation made by that Committee pursuant to section 2(1).

(5) Subsection (4)(a) does not apply to the first regulations made under subsection (3).

(6) For the purposes of this Act a 'pay reference period' is such period as the Department may prescribe for the purpose.

(7) Subsections (1) to (6) are subject to the following provisions of this Act.

2 The Minimum Wage Committee

(1) There is constituted a body by the name of 'the Minimum Wage Committee', which shall from time to time make recommendations as to the rate of the minimum wage to be prescribed under section 1(3).

(2) The Minimum Wage Committee shall consist of a chairman and 4 other members, all of whom shall be appointed by the Department.

(3) Subject to subsection (4)-

- (a) the chairman shall be a person appearing to the Department to be suitably qualified to act as such and to be independent of employers, workers and organisations representative of employers and workers;
- (b) of the other members-
 - (i) 2 shall be persons appearing to the Department to be representative of employers; and
 - (ii) 2 shall be persons appearing to the Department to be representative of workers.

(4) A person shall be disqualified for being appointed or being a member of the Minimum Wage Committee if he is a member of the Council, the Keys, any Statutory Board or any local authority.

(5) The Department shall make regulations with respect to the Minimum Wage Committee and, in particular, as to-

- (a) the term of office and the resignation or removal of members of the Committee; and
- (b) the proceedings of the Committee.

(6) Subject to any regulations under subsection (5), the procedure of the Minimum Wage Committee shall be such as the Committee may determine.

(7) The Department, with the consent of the Civil Service Commission, shall make such arrangements as it considers appropriate for the provision of staff for the Minimum Wage Committee.

Regulations relating to the minimum wage

3 Determination of hourly rate of remuneration

(1) The Department may by regulations make provision for determining what is the hourly rate at which a person is to be regarded for the purposes of this Act as remunerated by his employer in respect of his work in any pay reference period.

(2) The regulations may make provision for determining the hourly rate in cases where-

- (a) the remuneration, to the extent that it is at a periodic rate, is at a single rate;
- (b) the remuneration is, in whole or in part, at different rates applicable at different times or in different circumstances;
- (c) the remuneration is, in whole or in part, otherwise than at a periodic rate or

- rates;
 - (d) the remuneration consists, in whole or in part, of benefits in kind.
- (3) The regulations may make provision with respect to-
- (a) circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated;
 - (b) the treatment of periods of paid or unpaid absence from, or lack of, work and of remuneration in respect of such periods.
- (4) The provision that may be made by virtue of subsection (3)(a) includes provision for or in connection with-
- (a) treating a person as, or as not, working for a maximum or minimum time, or for a proportion of the time, in any period;
 - (b) determining any matter to which that paragraph relates by reference to the terms of an agreement.
- (5) The regulations may make provision with respect to-
- (a) what is to be treated as, or as not, forming part of a person's remuneration, and the extent to which it is to be so treated;
 - (b) the valuation of benefits in kind;
 - (c) the treatment of deductions from earnings;
 - (d) the treatment of any charges or expenses which a person is required to bear.
- (6) The regulations may make provision with respect to-
- (a) the attribution to a period, or the apportionment between two or more periods, of the whole or any part of any remuneration or work, whether or not the remuneration is received or the work is done within the period or periods in question;
 - (b) the aggregation of the whole or any part of the remuneration for different periods;
 - (c) the time at which remuneration is to be treated as received or accruing.
- (7) Subsections (2) to (6) are without prejudice to the generality of subsection (1).
- (8) No provision shall be made under this section which treats the same circumstances differently in relation to-
- (a) different areas;
 - (b) different sectors of employment;
 - (c) undertakings of different sizes;
 - (d) persons of different ages; or
 - (e) persons of different occupations.

4 Exclusion of, and modifications for, certain classes of person

(1) This section applies to-

- (a) persons who have not attained the age of 25; and
- (b) persons who have attained the age of 25 who-
 - (i) have been employed for a period of less than 6 months by an employer by whom they have not previously been employed;
 - (ii) are participating in a scheme under which shelter is provided in return for work;
 - (iii) are participating in a scheme designed to provide training, work experience or temporary work;
 - (iv) are participating in a scheme to assist in the seeking or obtaining of work;

or

- (v) are attending a course of further education requiring attendance for a period of work experience.

(2) The Department may by regulations make provision in relation to any of the persons to whom this section applies-

- (a) preventing them being persons who qualify for the minimum wage; or
- (b) prescribing an hourly rate for the minimum wage other than the single hourly rate for the time being prescribed under section 1(3).

(3) No provision shall be made under subsection (2) which treats persons differently in relation to-

- (a) different areas;
- (b) different sectors of employment;
- (c) undertakings of different sizes; or
- (d) different occupations.

(4) If any description of persons who have attained the age of 25 is added by regulations under section 5 to the descriptions of person to whom this section applies, no provision shall be made under subsection (2) which treats persons of that description differently in relation to different ages over 25.

5 Power to add to the persons to whom section 4 applies

(1) The Department may by regulations amend section 4 by adding descriptions of persons who have attained the age of 25 to the descriptions of person to whom that section applies.

(2) No amendment shall be made under subsection (1) which treats persons differently in relation to-

- (a) different areas;
- (b) different sectors of employment;
- (c) undertakings of different sizes;
- (d) different ages over 25; or
- (e) different occupations.

Records

6 Duty of employers to keep records

For the purposes of this Act the Department may by regulations make provision requiring employers-

- (a) to keep, in such form and manner as may be prescribed, such records as may be prescribed; and
- (b) to preserve those records for such period as may be prescribed.

7 Worker's right of access to records

(1) A worker may, in accordance with the following provisions of this section,-

- (a) require his employer to produce any relevant records; and
- (b) inspect and examine those records and copy any part of them.

(2) The rights conferred by subsection (1) are exercisable only if the worker believes on reasonable grounds that he is or may be being, or has or may have been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage.

(3) The rights conferred by subsection (1) are exercisable only for the purpose of establishing whether or not the worker is being, or has been, remunerated for any pay reference period by his employer at a rate which is less than the minimum wage.

(4) The rights conferred by subsection (1) are exercisable-

- (a) by the worker alone; or
- (b) by the worker accompanied by such other person as the worker may think fit.

(5) The rights conferred by subsection (1) are exercisable only if the worker gives notice (a 'production notice') to his employer requesting the production of any relevant records relating to such period as may be described in the notice.

(6) If the worker intends to exercise the right conferred by subsection (4)(b), the production notice must contain a statement of that intention.

(7) Where a production notice is given, the employer shall give the worker reasonable notice of the place and time at which the relevant records will be produced.

(8) The place at which the relevant records are produced must be-

- (a) the worker's place of work; or
- (b) any other place at which it is reasonable, in all the circumstances, for the worker to attend to inspect the relevant records; or
- (c) such other place as may be agreed between the worker and the employer.

(9) The relevant records must be produced-

- (a) before the end of the period of 14 days following the date of receipt of the production notice; or
- (b) at such later time as may be agreed during that period between the worker and the employer.

(10) In this section-

'records' means records which the worker's employer is required to keep and, at the time of receipt of the production notice, preserve in accordance with section 6;

'relevant records' means such parts of, or such extracts from, any records as are relevant to establishing whether or not the worker has, for any pay reference period to which the records relate, been remunerated by the employer at a rate which is at least equal to the minimum wage.

8 Failure of employer to allow access to records

(1) A complaint may be presented to the Employment Tribunal ('the Tribunal') by a worker on the ground that the employer-

- (a) failed to produce some or all of the relevant records in accordance with section 7(8) and (9); or
- (b) failed to allow the worker to exercise some or all of the rights conferred by section 7(1)(b) or (4)(b).

(2) Where the Tribunal finds a complaint under this section well-founded, it shall-

- (a) make a declaration to that effect; and
- (b) make an award that the employer pay to the worker a sum equal to 80 times the hourly amount of the minimum wage (as in force when the award is made).

(3) The Tribunal shall not consider a complaint under this section unless it is presented to it before the expiry of the period of 3 months following-

- (a) the end of the period of 14 days mentioned in section 7(9)(a); or
- (b) in a case where a later day was agreed under section 7(9)(b), that later day.

(4) Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the expiry of the period of 3 months mentioned in subsection (3), the tribunal may consider the complaint if it is presented within such further period as the Tribunal considers reasonable.

(5) Expressions used in this section and in section 7 have the same meaning in this section as they have in that section.

9 Employer to provide worker with minimum wage statement

(1) Regulations may make provision for the purpose of conferring on a worker the right to be given by his employer, at or before the time at which any payment of remuneration

is made to the worker, a written statement.

(2) The regulations may make provision with respect to the contents of any such statement and may, in particular, require it to contain-

- (a) prescribed information relating to this Act or any regulations under it; or
- (b) prescribed information for the purpose of assisting the worker to determine whether he has been remunerated at a rate at least equal to the minimum wage during the period to which the payment of remuneration relates.

(3) Any statement required to be given under this section to a worker by his employer may, if the worker is an employee, be included in the written itemised pay statement required to be given to him by his employer under section 14 of the Employment Act 2006 (right to itemised pay statement).

[Subs (3) amended by Employment Act 2006 Sch 8.]

(4) The regulations may make provision for the purpose of applying section 17 of the Employment Act 2006 (references to Tribunal) in relation to a worker and any such statement as is mentioned in subsection (1) as they apply in relation to an employee and a statement required to be given to him by his employer under section 14 of that Act.

[Subs (3) amended by Employment Act 2006 Sch 8.]

10 Powers of authorised officers

(1) An authorised officer shall have power for the performance of his functions under this Act-

- (a) to require the production by a relevant person of any records required to be kept and preserved in accordance with regulations under section 6 and to inspect and examine those records and to copy any material part of them;
- (b) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of any such records;
- (c) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Act, or any enforcement notice under section 15, is being or has been complied with;
- (d) at all reasonable times to enter any relevant premises in order to exercise any power conferred on the officer by paragraphs (a) to (c).

(2) No person shall be required under subsection (1)(b) or (c) to answer any question or furnish any information which might incriminate the person or, if married, the person's spouse.

(3) The powers conferred by subsection (1) include power, on reasonable written notice, to require a relevant person-

- (a) to produce any such records as are mentioned in subsection (1)(a) to an authorised officer at such time and place as may be specified in the notice; or
- (b) to attend before an authorised officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in subsection (1)(b) or (c).

(4) When acting for the purposes of this Act, an authorised officer shall, if so required, produce some duly authenticated document showing his authority so to act.

(5) If it appears to an authorised officer that any person with whom he is dealing while acting for the purposes of this Act does not know that he is an officer so acting, the officer shall identify himself as such to that person.

(6) In this section 'relevant person' means any person whom an authorised officer has reasonable cause to believe to be-

- (a) the employer of a worker;

- (b) a person who for the purposes of section 29 is the agent or the principal;
- (c) a person who supplies work to an individual who qualifies for the minimum wage;
- (d) a worker, servant or agent of a person falling within paragraph (a), (b) or (c); or
- (e) a person who qualifies for the minimum wage.

(7) In this section 'relevant premises' means any premises which an authorised officer has reasonable cause to believe to be-

- (a) premises at which an employer carries on business;
- (b) premises which an employer uses in connection with his business (including any place used, in connection with that business, for giving out work to home workers, within the meaning of section 30); or
- (c) premises of a person who for the purposes of section 29 is the agent or the principal.

Information

11 Information obtained by authorised officers

(1) This section applies to any information obtained by an authorised officer acting for the purposes of this Act.

(2) Information to which this section applies vests in the Department.

(3) Information to which this section applies may be used for any purpose relating to this Act by the Department.

(4) This section does not limit the circumstances in which information may be supplied or used apart from this section.

(5) Subsection (2) does not affect the title or rights of-

- (a) any person whose property the information was immediately before it was obtained as mentioned in subsection (1); or
- (b) any person claiming title or rights through or under such a person otherwise than by virtue of any power conferred by or under this Act.

(6) If an officer of the Department discloses to another person information to which this section applies which relates to a manufacturing process or trade secret, then, unless the disclosure is made as mentioned in subsection (3), he is guilty of an offence and liable-

- (a) on summary conviction to a fine not exceeding £5,000, or
- (b) on conviction on information to custody for a term not exceeding 2 years or a fine or both.

12 Information obtained by agricultural wages officers

(1) This section applies to information which has been obtained by an officer appointed under section 11(1) of the Agricultural Wages Act 1952.

(2) Information to which this section applies may, with the authorisation of the Agriculture Department, be supplied to the Department for use for any purpose relating to this Act.

(3) Information supplied under subsection (2)-

- (a) shall not be supplied by the Department to any other person or body unless it is supplied for the purposes of any civil or criminal proceedings relating to this Act; and
- (b) shall not be supplied in those circumstances without the authorisation of the Agriculture Department.

(4) This section does not limit the circumstances in which information may be supplied or used apart from this section.

(5) Subsection (6) of section 11 applies to information supplied under subsection

(2) as it applies to information to which that section applies.

Enforcement

13 Non-compliance: worker entitled to additional remuneration

(1) If a worker who qualifies for the minimum wage is remunerated for any pay reference period by his employer at a rate which is less than the minimum wage, the worker shall be taken to be entitled under his contract to be paid, as additional remuneration in respect of that period, the amount described in subsection (2).

(2) That amount is the difference between-

- (a) the relevant remuneration received by the worker for the pay reference period; and
- (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the minimum wage.

(3) In subsection (2), 'relevant remuneration' means remuneration which falls to be brought into account for the purposes of regulations under section 3.

14 Enforcement in the case of special classes of worker

(1) If the persons who are the worker and the employer for the purposes of section 13 would not (apart from this section) fall to be regarded as the employee and the employer for the purposes of sections 21 to 28 of the Employment Act 2006 (deductions from wages, etc.), they shall be so regarded for the purposes of the application of the said sections 21 to 28 in relation to the entitlement conferred by that section.

[Subs (1) amended by Employment Act 2006 Sch 8.]

(2) In the application, by virtue of subsection (1), of sections 21 to 28 of the Employment Act 2006 in a case where there is or was, for the purposes of those provisions, no employee's contract between the persons who are the worker and the employer for the purposes of section 13, it shall be assumed that there is or, as the case may be, was such a contract.

[Subs (2) amended by Employment Act 2006 Sch 8.]

(3) For the purpose of enabling the amount described as additional remuneration in section 13(1) to be recovered in civil proceedings on a claim in contract in a case where in fact there is or was no employee's contract between the persons who are the worker and the employer for the purposes of that section, it shall be assumed for the purpose of any civil proceedings, so far as relating to that amount, that there is or, as the case may be, was such a contract.

15 Power to issue enforcement notice

(1) If an authorised officer is of the opinion that a worker who qualifies for the minimum wage has not been remunerated for any pay reference period by his employer at a rate at least equal to the minimum wage, the officer may serve a notice (an 'enforcement notice') on the employer requiring the employer to remunerate the worker for pay reference periods ending on or after the date of the notice at a rate equal to the minimum wage.

(2) An enforcement notice may also require the employer to pay to the worker within such time as may be specified in the notice the sum due to the worker under section 13 in respect of the employer's previous failure to remunerate the worker at a rate at least equal to the minimum wage.

(2A) If an authorised officer acting for the purposes of this Act is of the opinion that a worker who has at any time qualified for the minimum wage has not been remunerated for any pay reference period (whether ending before or after the commencement of this subsection) by his employer at a rate at least equal to the minimum wage, the authorised officer may serve on the employer an enforcement notice which imposes a requirement under subsection (2) in relation to the worker, whether or

not a requirement under subsection (1) is, or may be, imposed in relation to that worker (or any other worker to whom the notice relates).

[Subs (2A) inserted by Employment Act 2006 Sch 8.]

(2B) An enforcement notice may not impose a requirement under subsection (2) in respect of any pay reference period ending more than 6 years before the date on which the notice is served.

[Subs (2B) inserted by Employment Act 2006 Sch 8.]

(3) The same enforcement notice may relate to more than one worker (and, where it does so, may be so framed as to relate to workers specified in the notice or to workers of a description so specified).

(4) A person on whom an enforcement notice is served may appeal to the Tribunal against the notice before the end of the period of 4 weeks following the date of service of the notice.

(5) On an appeal under subsection (4), the Tribunal shall dismiss the appeal unless it is established-

- (a) that, in the case of the worker or workers to whom the enforcement notice relates, the facts are such that an authorised officer who was aware of them would have had no reason to serve any enforcement notice on the appellant; or
- (b) where the enforcement notice relates to 2 or more workers, that the facts are such that an authorised officer who was aware of them would have had no reason to include some of the workers in any enforcement notice served on the appellant; or
- (c) where the enforcement notice imposes a requirement under subsection (2) in relation to a worker,-
 - (i) that no sum was due to the worker under section 13; or
 - (ii) that the amount specified in the notice as the sum due to the worker under that section is incorrect;

and in this subsection any reference to a worker includes a reference to a person whom the enforcement notice purports to treat as a worker.

(6) Where an appeal is allowed by virtue of subsection (5)(a), the Tribunal shall cancel the enforcement notice.

(7) If, in a case where subsection (6) does not apply, an appeal is allowed by virtue of subsection (5)(b) or (c)-

- (a) the Tribunal shall rectify the enforcement notice; and
- (b) the notice shall have effect as if it had originally been served as so rectified.

(8) The powers of the Tribunal in allowing an appeal in a case where subsection (7) applies shall include power to rectify, as the Tribunal may consider appropriate in consequence of its decision on the appeal, any penalty notice which has been served under section 17 in respect of the enforcement notice.

(9) Where a penalty notice is rectified under subsection (8), it shall have effect as if it had originally been served as so rectified.

16 Non-compliance: power of officer to sue on behalf of worker

(1) If an enforcement notice is not complied with in whole or in part, an authorised officer may, on behalf of any worker to whom the notice relates,-

- (a) present a complaint under section 25(1)(a) of the Employment Act 2006 (complaints to tribunal regarding deductions from wages) to the Tribunal in respect of any sums due to the worker by virtue of section 21; or

[Para (a) substituted by Employment Act 2006 Sch 8.]

- (b) commence proceedings in the High Court for the recovery, on a claim in

contract, of any sums due to the worker by virtue of section 21 of that Act.

[Para (b) amended by Employment Act 2006 Sch 8.]

(2) The powers conferred by subsection (1) for the recovery of sums due from an employer to a worker shall not be in derogation of any right which the worker may have to recover such sums by civil proceedings.

17 Financial penalty for non-compliance

(1) If an authorised officer is satisfied that a person on whom an enforcement notice has been served has failed, in whole or in part, to comply with the notice, the officer may serve on that person a notice (a 'penalty notice') requiring the person to pay a financial penalty to the Treasury.

(2) A penalty notice must state-

- (a) the amount of the financial penalty;
- (b) the time within which the financial penalty is to be paid (which must not be less than 4 weeks from the date of service of the notice);
- (c) the period to which the financial penalty relates;
- (d) the respects in which the authorised officer is of the opinion that the enforcement notice has not been complied with; and
- (e) the calculation of the amount of the financial penalty.

(3) The amount of the financial penalty shall be calculated at a rate equal to twice the hourly amount of the minimum wage (as in force at the date of the penalty notice) in respect of each worker to whom the failure to comply relates for each day during which the failure to comply has continued in respect of the worker.

(4) The Department and the Treasury, acting jointly, may by regulations from time to time amend the multiplier for the time being specified in subsection (3) in relation to the hourly amount of the minimum wage.

(5) A financial penalty under this section shall be recoverable, if the High Court so orders, by execution or otherwise as if it were payable under a judgment of that court.

(6) Where a person has appealed under section 15(4) against an enforcement notice and the appeal has not been withdrawn or finally determined, then, notwithstanding the appeal,-

- (a) the enforcement notice shall have effect; and
- (b) an authorised officer may serve a penalty notice in respect of the enforcement notice.

(7) If, in a case falling within subsection (6), an authorised officer serves a penalty notice in respect of the enforcement notice, the penalty notice-

- (a) shall not be enforceable until the appeal has been withdrawn or finally determined; and
- (b) shall be of no effect if the enforcement notice is cancelled as a result of the appeal; but
- (c) subject to paragraph (b) and section 18(3) and (5)(a), as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) had not had effect.

(8) Any sums received by the Treasury by virtue of this section shall be paid into the general revenue of the Island.

18 Appeals against penalty notices

(1) A person on whom a penalty notice is served may appeal to the Tribunal against the notice before the end of the period of 4 weeks following the date of service of the notice.

(2) On an appeal under subsection (1), the Tribunal shall dismiss the appeal unless it is shown-

- (a) that, in the case of each of the allegations of failure to comply with the

enforcement notice, the facts are such that an authorised officer who was aware of them would have had no reason to serve any penalty notice on the appellant; or

(b) that the penalty notice is incorrect in some of the particulars which affect the amount of the financial penalty; or

(c) that the calculation of the amount of the financial penalty is incorrect;

and for the purposes of any appeal relating to a penalty notice, the enforcement notice in question shall (subject to cancellation or rectification on any appeal brought under section 15) be taken to be correct.

(3) Where an appeal is allowed by virtue of subsection (2)(a), the Tribunal shall cancel the penalty notice.

(4) If, in a case where subsection (3) does not apply, an appeal is allowed by virtue of subsection (2)(b) or (c)-

(a) the Tribunal shall rectify the penalty notice; and

(b) the notice shall have effect as if it had originally been served as so rectified.

(5) Where a person has appealed under subsection (1) against a penalty notice and the appeal has not been withdrawn or finally determined, the penalty notice-

(a) shall not be enforceable until the appeal has been withdrawn or finally determined; but

(b) subject to subsection (3) and section 17(7)(a) and (b), as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) had not had effect.

Rights not to suffer unfair dismissal or other detriment

19 The right not to suffer detriment

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that-

(a) any 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, a right of the worker's to which this section applies; or

(b) the employer was prosecuted for an offence under section 26 as a result of action taken by or on behalf of the worker for the purpose of enforcing, or otherwise securing the benefit of, a right of the worker's to which this section applies; or

(c) the worker qualifies, or will or might qualify, for the minimum wage or for a particular rate of minimum wage.

(2) It is immaterial for the purposes of subsection (1)(a) or (b)-

(a) whether or not the worker has the right, or

(b) whether or not the right has been infringed,

but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this section applies-

(a) any right conferred by, or by virtue of, any provision of this Act for which the remedy for its infringement is by way of a complaint to the Tribunal; and

(b) any right conferred by section 13.

(4) Except where a person is dismissed in circumstances in which, by virtue of paragraph 2 of Schedule 5 to the Employment Act 1991 (fixed term contracts), Part V of that Act (unfair dismissal) does not apply to the dismissal, this section does not apply where the detriment in question amounts to dismissal within the meaning of that Part.

[Subs (4) substituted by Employment Act 2006 Sch 8.]

20 Enforcement of the right

(1) A worker may present a complaint to the Tribunal that he has been subjected to a detriment in contravention of section 19.

(2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) The Tribunal shall not consider a complaint under this section unless it is presented-

(a) before the end of the period of 3 months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

(4) For the purposes of subsection (3)-

(a) where an act extends over a period, the 'date of the act' means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

21 Remedies

(1) Where the Tribunal finds a complaint under section 20 well-founded, the Tribunal-

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) The amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss shall be taken to include-

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law.

(5) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) Where-

(a) the detriment to which the worker is subjected is the termination of his worker's contract, but

(b) that contract is not a contract of employment,

any compensation awarded under this section must not exceed the limit specified in subsection (7).

(7) The limit mentioned in subsection (6) is the total of-

(a) the sum which would be the basic award for unfair dismissal, calculated in

accordance with section 142 of the Employment Act 2006, if the worker had been an employee and the contract terminated had been a contract of employment; and

[Para (a) amended by Employment Act 2007 Sch 8.]

- (b) the sum for the time being prescribed under section 144 of that Act as the limit for a compensatory award to a person calculated in accordance with section 143 of that Act.

[Para (b) amended by Employment Act 2007 Sch 8.]

22[

[S 22 repealed by Employment Act 2006 Sch 9.]

Evidence and appeals

23 Reversal of burden of proof

(1) Where in any civil proceedings any question arises as to whether an individual qualifies or qualified at any time for the minimum wage, it shall be presumed that the individual qualifies or, as the case may be, qualified at that time for the minimum wage unless the contrary is established.

(2) Where-

- (a) a complaint is made to the Tribunal under section 25(1)(a) of the Employment Act 2006 (complaints to tribunal regarding deductions from wages), and

[Para (a) amended by Employment Act 2006 Sch 8.]

- (b) the complaint relates in whole or in part to the deduction of the amount described as additional remuneration in section 13(1),

it shall be presumed for the purposes of the complaint, so far as relating to the deduction of that amount, that the worker in question was remunerated at a rate less than the minimum wage unless the contrary is established.

(3) Where in any civil proceedings a person seeks to recover on a claim in contract the amount described as additional remuneration in section 13(1), it shall be presumed for the purposes of the proceedings, so far as relating to that amount, that the worker in question was remunerated at a rate less than the minimum wage unless the contrary is established.

24 and 25

[Ss 24 and 25 repealed by Employment Act 2006 Sch 9.]

Offences

26 Offences

(1) If the employer of a worker who qualifies for the minimum wage refuses or wilfully neglects to remunerate the worker for any pay reference period at a rate which is at least equal to the minimum wage, that employer is guilty of an offence.

(2) If a person who is required to keep or preserve any record in accordance with regulations under section 6 fails to do so, that person is guilty of an offence.

(3) If a person makes, or knowingly causes or allows to be made, in a record required to be kept in accordance with regulations under section 6 any entry which he knows to be false in a material particular, that person is guilty of an offence.

(4) If a person, for purposes connected with the provisions of this Act, produces or furnishes, or knowingly causes or allows to be produced or furnished, any record or information which he knows to be false in a material particular, that person is guilty of an offence.

(5) If a person-

- (a) intentionally delays or obstructs an authorised officer in the exercise of any power conferred by this Act, or
- (b) refuses or neglects to answer any question, furnish any information or produce any document when required to do so under section 10(1),

that person is guilty of an offence.

(6) Where the commission by any person of an offence under subsection (1) or (2) is due to the act or default of some other person, that other person is also guilty of the offence.

(7) A person may be charged with and convicted of an offence by virtue of subsection (6) whether or not proceedings are taken against any other person.

(8) In any proceedings for an offence under subsection (1) or (2) it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this Act, and of any relevant regulations made under it, were complied with by himself and by any person under his control.

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.

27 Offences by bodies corporate etc

(1) If an offence under this Act committed by a body corporate is proved-

(a) to have been committed with the consent or connivance of an officer of the body, or

(b) to be attributable to any neglect on the part of such an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) 'officer', in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

28 Proceedings for offences

(1) The persons who may conduct proceedings for an offence under this Act before a court of summary jurisdiction shall include any person authorised for the purpose by the Department even if that person is not an advocate.

(2) Proceedings for an offence under this Act may be begun at any time within whichever of the following periods expires the later-

(a) the period of 6 months from the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to the knowledge of the Department, or

(b) the period of 12 months from the commission of the offence, notwithstanding section 75 of the Summary Jurisdiction Act 1989.

(3) For the purposes of subsection (2), a certificate purporting to be signed by or on behalf of the Department as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to the knowledge of the Department shall be conclusive evidence of that date.

Special classes of person

29 Agency workers who are not otherwise 'workers'

(1) This section applies in any case where an individual ('the agency worker')-

(a) is supplied by a person ('the agent') to do work for another ('the principal') under a contract or other arrangements made between the agent and the principal; but

(b) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal; and

(c) is not a party to a contract under which he undertakes to do the work for

another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(2) In a case where this section applies, the other provisions of this Act shall have effect as if there were a worker's contract for the doing of the work by the agency worker made between the agency worker and-

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

30 Home workers who are not otherwise 'workers'

(1) In determining for the purposes of this Act whether a home worker is or is not a worker, section 46(3)(b) shall have effect as if for the word 'personally' there were substituted '(whether personally or otherwise)'.

(2) In this section 'home worker' means an individual who contracts with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person.

31 Crown employment

(1) Subject to section 32, the provisions of this Act have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other workers.

(2) In this Act 'Crown employment' has the same meaning as in section 173 of the Employment Act 2006.

[Subs (2) amended by Employment Act 2006 Sch 8.]

(3) For the purposes of the application of the other provisions of this Act in relation to Crown employment in accordance with subsection (1)-

- (a) references to an employee or a worker shall be construed as references to a person in Crown employment;
- (b) references to a contract of employment or a worker's contract shall be construed as references to the terms of employment of a person in Crown employment; and
- (c) references to dismissal, or to the termination of a worker's contract, shall be construed as references to the termination of Crown employment.

32 Armed forces

(1) A person serving as a member of the naval, military or air forces of the Crown does not qualify for the minimum wage in respect of that service.

(2) Section 31 applies to employment by an association established for the purposes of Part XI of the Reserve Forces Act 1996 (an Act of Parliament), as it has effect in the Island⁵, notwithstanding anything in subsection (1).

33 Seafarers

For the purposes of this Act, an individual employed to work on board a ship registered in the Island under the Merchant Shipping Registration Act 1991 shall be treated as an individual who under his contract ordinarily works in the Island unless-

- (a) the employment is wholly outside the Island; or
- (b) the person is not ordinarily resident in the Island;

and related expressions shall be construed accordingly.

Extensions

34 Power to apply Act to individuals who are not otherwise 'workers'

The Department may by regulations make provision for this Act to apply, with or without modifications, as if-

- (a) any individual of a prescribed description who would not otherwise be a worker for the purposes of this Act were a worker for those purposes;
- (b) there were in the case of any such individual a worker's contract of a prescribed description under which the individual works; and
- (c) a person of a prescribed description were the employer under that contract.

35 Power to apply Act to offshore employment

(1) In this section 'offshore employment' means employment for the purposes of activities in the territorial waters of the Island

(2) The Council of Ministers may by order provide that the provisions of this Act apply, to such extent and for such purposes as may be specified in the order (with or without modification), to or in relation to a person in offshore employment.

(3) An order under this section may make provision for conferring jurisdiction on any court specified in the order, or on the Tribunal, in respect of offences, causes of action or other matters arising in connection with offshore employment, but any such jurisdiction shall be without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

Exclusions

36 Share fishermen

A person-

- (a) employed as master, or as a member of the crew, of a fishing vessel, and
- (b) remunerated, in respect of that employment, only by a share in the profits or gross earnings of the vessel,

does not qualify for the minimum wage in respect of that employment.

37 Voluntary workers

(1) A worker employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body does not qualify for the minimum wage in respect of that employment if he receives, and under the terms of his employment (apart from this Act) is entitled to,-

- (a) no monetary payments of any description, or no monetary payments except in respect of expenses-
 - (i) actually incurred in the performance of his duties; or
 - (ii) reasonably estimated as likely to be or to have been so incurred; and
- (b) no benefits in kind of any description, or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment.

(2) A person who would satisfy the conditions in subsection (1) but for receiving monetary payments made solely for the purpose of providing him with means of subsistence shall be taken to satisfy those conditions if-

- (a) he is employed to do the work in question as a result of arrangements made between a charity acting in pursuance of its charitable purposes and the body for which the work is done; and
- (b) the work is done for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.

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

- (a) any training (other than that which a person necessarily acquires in the course of doing his work) shall be taken to be a benefit in kind; but
- (b) there shall be left out of account any training provided for the sole or main purpose of improving the worker's ability to perform the work which he has

agreed to do.

(4) In this section-

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

'receive', in relation to a monetary payment or a benefit in kind, means receive in respect of, or otherwise in connection with, the employment in question (whether or not under the terms of the employment);

'statutory body' means a body established by or under an enactment;

'subsistence' means such subsistence as is reasonable in the circumstances of the employment in question, and does not include accommodation;

'voluntary organisation' means a body of persons, or the trustees of a trust, which is established only for charitable, benevolent or philanthropic purposes, but which is not a charity.

38 Members of religious communities etc

(1) This section applies to a community-

- (a) which is, or is established by, a charity,
- (b) whose purpose is to practise or advance a belief of a religious or similar nature, and
- (c) some or all of whose members live together for that purpose, but
- (d) is not an independent school (within the meaning of the Education Act 2001) and does not provide a course of further education.

(2) The members of a community to which this section applies who live together as mentioned in subsection (1)(c) do not qualify for the minimum wage in respect of employment by the community.

39 Detainees

(1) A detainee does not qualify for the minimum wage in respect of any work which he does in pursuance of custody rules.

(2) In this section 'detainee' and 'custody rules' have the same meanings as in the Custody Act 1995.

Agricultural workers

40 Relationship between this Act and Agricultural Wages Act 1952

(1) A person who has been prosecuted for either of the following offences-

- (a) an offence under any provision of this Act in its application for the purposes of the Agricultural Wages Act 1952, or
- (b) an offence under any provision of this Act in its application otherwise than for the purposes of that Act,

shall not also be liable to be prosecuted for the other offence which is constituted by the same conduct or alleged conduct for which he was prosecuted.

(2) No amount shall be recoverable both-

- (a) under or by virtue of this Act in its application for the purposes of the Agricultural Wages Act 1952, and
- (b) under or by virtue of this Act in its application otherwise than for those purposes,

in respect of the same work.

(3) Nothing in the Agricultural Wages Act 1952, or in any order under that Act, affects the operation of this Act in its application otherwise than for the purposes of that Act.

41 Amendments relating to remuneration etc of agricultural workers

(1) The Agricultural Wages Act 1952 is amended in accordance with the Schedule.

(2) The Department and the Agriculture Department acting jointly may by

regulations-

- (a) make any amendments of the Agricultural Wages Act 1952 which appear to them to be necessary or expedient in consequence of this Act or of regulations under section 1(3), 4 or 5; and
- (b) amend, or make provision in substitution for, section 6 of that Act (reckoning of benefits etc. as wages).

Miscellaneous

42 Application of Act to superior employers

Where-

- (a) the immediate employer of a worker is himself in the employment of some other person, and
 - (b) the worker is employed on the premises of that other person,
- that other person shall be deemed for the purposes of this Act to be the employer of the worker jointly with the immediate employer.

43 Restrictions on contracting-out

(1) Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports-

- (a) to exclude or limit the operation of any provision of this Act; or
- (b) to preclude a person from bringing proceedings under this Act before the Tribunal.

(2) Subsection (1) does not apply to an agreement settling a complaint to the Tribunal under this Act where-

- (a) the agreement is made with the assistance of an industrial relations officer; or
- (b) the following conditions are satisfied-
 - (i) the agreement is in writing;
 - (ii) the agreement relates to the particular complaint;
 - (iii) the complainant has received independent legal advice from an advocate as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue a complaint before the Tribunal;
 - (iv) the agreement identifies the advocate;
 - (v) the agreement states that the conditions in this paragraph are satisfied.

44 Publicity

(1) The Department shall arrange for information about this Act and regulations under it to be published by such means as appear to the Department to be most appropriate for drawing the provisions of this Act and those regulations to the attention of persons affected by them.

(2) The information required to be published under subsection (1) includes, in particular, information about-

- (a) the hourly rate for the time being prescribed under section 1;
- (b) the method or methods to be used for determining under section 3 the hourly rate at which a person is to be regarded for the purposes of this Act as remunerated by his employer in respect of his work in any pay reference period;
- (c) the methods of enforcing rights under this Act; and
- (d) the persons to whom section 4 applies and the provision made in relation to them by regulations under that section.

Supplementary

45 Regulations and orders

Regulations and orders made by the Council of Ministers or any Department under this Act (except an order under section 48(2)) shall not have effect unless they are approved by Tynwald.

46 Meaning of 'worker', 'employee' etc

(1) In this Act **'employee'** means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act **'contract of employment'** means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act **'worker'** (except in the phrases 'agency worker' and 'home worker') means an individual who has entered into or works under (or, where the employment has ceased, worked under)-

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act **'employer'**, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act **'employment'**-

- (a) in relation to an employee, means employment under a contract of employment; and
- (b) in relation to a worker, means employment under his contract;

and **'employed'** shall be construed accordingly.

47 Interpretation

(1) In this Act-

'the Agriculture Department' means the Department of Agriculture, Fisheries and Forestry;

'authorised officer' means a person authorised by the Department to act as an authorised officer for the purposes of this Act;

'charity' means a body of persons, or the trustees of a trust, established for charitable purposes only;

'civil proceedings' means proceedings before the Tribunal or civil proceedings before any other court;

'the Department' means the Department of Trade and Industry;

'enforcement notice' shall be construed in accordance with section 15;

'further education' means full-time or part-time education for persons over compulsory school age;

'notice' means notice in writing;

'pay reference period' shall be construed in accordance with section 1(6);

'penalty notice' shall be construed in accordance with section 17;

'person who qualifies for the minimum wage' shall be construed in accordance with section 1(2); and related expressions shall be construed accordingly;

'prescribe' means prescribe by regulations;

'regulations' means regulations made by the Department, except in the case of-

- (a) regulations under section 1(3) or 17(4) made by the Department and the

- Treasury acting jointly; and
- (b) regulations under section 41(2) made by the Department and the Agriculture Department acting jointly;

'the Tribunal' means the Employment Tribunal.

(2) Any reference in this Act to a person being remunerated for a pay reference period is a reference to the person being remunerated by his employer in respect of his work in that pay reference period.

(3) Any reference in this Act to doing work includes a reference to performing services; and 'work' and other related expressions shall be construed accordingly.

48 Short title and commencement

(1) This Act may be cited as the Minimum Wage Act 2001.

(2) This Act shall come into operation on such day or days as the Department may by order appoint.

[ADO (whole Act) 1/1/2002 (SD597/01).]

Schedule

Amendments of Agricultural Wages Act 1952

[Sch amends the following Act-
Agricultural Wages Act 1952 q.v.]