



FALKLAND ISLANDS

Minimum Wage Ordinance 2013

(ORDINANCE No. 10 OF 2013)

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FALKLAND ISLANDS

Minimum Wage Ordinance 2013

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

[DATE OF COMMENCEMENT: 1ST DECEMBER 2013]ⁱ

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 1989;

[Revision w.e.f. 31/07/2017]

"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" . . .

[S. 25(1)(a)/Ord. 5/15/w.e.f. 1/1/16.]

"minimum wage rate for adults" . . .

[S. 25(1)(a)/Ord. 5/15/w.e.f. 1/1/16.]

"minimum wage rate for young persons" . . .

[S. 25(1)(a)/Ord. 5/15/w.e.f. 1/1/16.]

"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) An order made under subsection (3) or (4) may come into force as soon as it is published in the Gazette but the order may only continue in force beyond the next meeting of the Legislative Assembly that takes place after publication if it is approved by resolution of the Legislative Assembly at that meeting.
- (7) If the order is not approved by resolution of the Legislative Assembly in accordance with subsection (6)-
 - (a) the order ceases to have effect from the end of the meeting at which it needed to be approved to continue in force; and
 - (b) the Governor must arrange for a notice to be published in the Gazette stating that the order has ceased to have effect.
- (8) An order ceasing to have effect under subsection 7(a) does not-
 - (a) affect the validity of the order while it was in force, or
 - (b) prevent the making of a new order.
- (9) Subsections (6) to (8) do not prevent the Legislative Assembly from amending an order under section 35(2) of the Interpretation and General Clauses Ordinance 1977.

[Revision w.e.f. 31/07/2017]

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.
- (6) An order made under subsection (3) or (4) may come into force as soon as it is published in the Gazette but the order may only continue in force beyond the next meeting of the Legislative Assembly that takes place after publication if it is approved by resolution of the Legislative Assembly at that meeting.
- (7) If the order is not approved by resolution of the Legislative Assembly in accordance with subsection (6)-
- (a) the order ceases to have effect from the end of the meeting at which it needed to be approved to continue in force; and
 - (b) the Governor must arrange for a notice to be published in the Gazette stating that the order has ceased to have effect.
- (8) An order ceasing to have effect under subsection 7(a) does not-
- (a) affect the validity of the order while it was in force, or
 - (b) prevent the making of a new order.
- (9) Subsections (6) to (8) do not prevent the Legislative Assembly from amending an order under section 35(2) of the Interpretation and General Clauses Ordinance.

[Revision w.e.f. 31/07/2017]

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 a 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 rate

(1) The minimum wage rate is £9.66.

[S. 14/Ord. 5/16/w.e.f. 1/1/201; s. 13/Ord. 10/2017/w.e.f. 1/1/2018; s. 11/Ord. 4/2018/w.e.f. 1/1/2019; s. 24/Ord. 11/2019/w.e.f. 1/1/2020; s. 5/Ord. 7/2020/w.e.f. 1/1/2021; s. 5/Ord. 5/2021 w.e.f. 01/01/2022; Sch.Pt.A./Ord. 13/2022/w.e.f. 01/01/2023; Sch.Pt.A./Ord. 5/2023/w.e.f. 01/01/2024; Sch.Pt.A./Ord. 6/2024/w.e.f. 01/01/2025; Sch. Pt.A/Ord. 5/2025/w.e.f. 01/01/2026]

(2) A review of the minimum wage rate must take place at least every 12 months, following which the rate may be changed.

(3) A change to the minimum wage rate must not take effect until at least 3 months after the new rate has been published in the Gazette.

[S. 25(1)(b)(i)/Ord. 5/15/w.e.f. 1/1/16.]

12 ...

[S. 25(1)(b)(ii)/Ord. 5/15/w.e.f. 1/1/16.]

13 ...

[S. 25(1)(b)(ii)/Ord. 5/15/w.e.f. 1/1/16.]

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

(1) 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.

[S. 4/Ord. 11/2025/w.e.f. 01/01/2026]

(2) Regulations under subsection (1) must include, as part of the calculation, an accommodation offset where accommodation is provided to a worker by the employer or by a “connected person” on behalf of the employer.

[S. 4/Ord. 11/2025/w.e.f. 01/01/2026]

(3) For purposes of subsection (2), a person is “connected with” another person if they are connected with each other within the meaning of section 208 of the Taxes Ordinance 1997.

[S. 4/Ord. 11/2025/w.e.f. 01/01/2026]

PART 7

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

16 Records to be kept by employers (and duty of employees to provide information reasonably required for record keeping purposes)

(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.

(3) If an employer reasonably requires information from a worker for the purpose of keeping the records, the worker is under a duty to provide the employer with that information.

(4) To the extent that a worker does not provide an employer with information that is reasonably required to keep the records-

- (a) the employer is not to be treated as having kept records that are not adequate; and
- (b) in relation to proceedings under section 20 (or a complaint under section 21 or 23), the Summary Court (and the Magistrate's Court when dealing with an appeal) must take that into account when-
 - (i) determining the 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).

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 been 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 2002; and
- [Revision w.e.f. 31/07/2017]*
- (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 1989 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 in 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 10 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 1942 is repealed.

[Revision w.e.f. 31/07/2017]

SCHEDULE 1
"WORKER": SPECIAL CASES

1 Employment by FIG or UK Government (Crown employment)

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
 - (b) 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 1994.

[Revision w.e.f. 31/07/2017]

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 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 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) ...
 - (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 1966;

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- (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.

ⁱ Notice 78 of 28/10/13