



## **ACS Submission: Enforcement of employment rights recommendations**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy's consultation on the Taylor Review of Modern Working Practices recommendations on the enforcement of employment rights. ACS represents over 33,500 local shops and petrol forecourt sites including Co-op, BP, McColls and thousands of independent retailers, many of which trade under brands such as Spar, Budgens and Bestway. Further information about ACS is available at Annex A.

There are almost 50,000 convenience stores in mainland UK, employing 370,000 people. Employment in the sector is predominantly part-time with two-thirds (64%) working fewer than 30 hours per week and two-thirds (66%) of convenience sector colleagues are female. The sector employs people from a range of backgrounds, with 20% of colleagues aged under 25 and 13% over 60 years old<sup>1</sup>. Staff turnover in the sector is relatively low, with 44% working in their job at a convenience store for over 5 years<sup>2</sup>.

Flexibility of employment is important to people working in local shops, as 70% of colleagues have commitments which impact the working hours they can undertake, such as childcare, studying or volunteering. Convenience stores provide local employment with 55% of colleagues walking to work and an average travel time to work of 13 minutes and daily travel cost of only £1.63. ACS' Colleague Survey 2018 shows that three-quarters (73%) of colleagues are satisfied with their job and over three-quarters (76%) rate on the job training, considered the most valuable staff benefit, as 'very good' or 'fairly good'.<sup>3</sup>

The introduction of the National Living Wage and other non-wage employment cost has in part delivered a 9% drop in employment numbers in the sector, from 407,000 in 2015 to 370,000 in 2017<sup>4</sup>. Retailers responded to the £7.50 rate by reducing working hours in the business (78%), reducing the profitability of their business (78%) and working more hours in the business themselves (65%)<sup>5</sup>. 48% have reduced their staff numbers and one-in-three (36%) have also reduced staff benefits in the business<sup>6</sup>.

Rising employment costs have caused retailers to focus on making savings elsewhere in the business and improving productivity. 87%<sup>7</sup> of retailers report they have not experienced reduced staff turnover, reduced absenteeism or increased productivity since the National Living Wage was introduced, although half (49%<sup>8</sup>) of colleagues report they have been given

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<sup>1</sup> ACS Local Shop Report 2017

<sup>2</sup> ACS Local Shop Report 2017

<sup>3</sup> ACS Colleague Survey 2018

<sup>4</sup> ACS Local Shop Report 2015 - 2017

<sup>5</sup> ACS National Living Wage Survey 2017

<sup>6</sup> ACS National Living Wage Survey 2017

<sup>7</sup> ACS National Living Wage Survey 2017

<sup>8</sup> ACS Colleague Survey 2018

more work to do in the same amount of time. Work in convenience stores is valued by colleagues, with 30% seeing themselves in a similar role with their current employer in five years' time and 38% believing they will be in a more senior role with their current employer<sup>9</sup>.

## **Executive Summary**

- There is no evidence to suggest non-compliance with holiday entitlement or statutory sick pay in the convenience sector therefore we are not opposed to the principle of wider state-led enforcement of employment rights.
- Before the extension of state-led enforcement activity is considered HMRC must review their enforcement practices and learn lessons from how they enforce existing National Minimum Wage regulations. There have been extensive problems with understanding HMRC's interpretation and enforcement of regulations.
- The statutory sick pay system should facilitate phased returns to work and ongoing conversations between employers and employees to reduce repeat sick leave absences. Fit Notes should provide practical detail on work duties to enhance employer understanding and confidence to discuss working requirements with colleagues.

ACS' consultation response focuses on questions from Section A on state-led enforcement of employment rights. We have limited evidence to support Sections B and C on enforcement of employment tribunal awards and additional awards and penalties for employment tribunals.

## **Section A: State-led enforcement**

### **2. Do you think problems are concentrated in any sector of the economy, or are suffered by any particular groups of workers?**

Convenience retail businesses are responsible employers and there is limited evidence of employees in the sector being denied their core pay rights of the National Minimum Wage, sick pay or holiday pay. The Low Pay Commission's work on non-compliance<sup>10</sup> with National Living Wage has shown that the retail sector does not have systemic non-compliance issues and this research is likely to be a good proxy for compliance in other areas.

We do know from surveys of convenience retailers that they are concerned about the cost of statutory sick pay. On average Statutory Sick Pay costs £673.95 per convenience store or £33.7 million across the sector, without accounting for the additional finance a retailer must find to fund another wage to cover employee absence<sup>11</sup>.

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<sup>9</sup> ACS Colleague Survey 2018

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<sup>11</sup> ACS National Living Wage Survey 2017

#### **4. What would be the advantages and disadvantages for businesses of state enforcement in these areas?**

Convenience retailers are responsible employers, providing a full set employment rights to their employees. There is no evidence of malpractice enforcing these rights in the sector and we support the principle of strengthened enforcement activity against businesses which may otherwise gain a competitive advantage by illegitimately reducing their labour costs.

Enhanced enforcement of basic employment rights should not create undue compliance burdens and be light touch for business with clear and reasonable record keeping requirements. New Government guidance should be published outlining how retailers can ensure they are compliant with the National Minimum Wage, sick pay and holiday pay that is suitable for independent retailers without a central HR function.

Enhanced state enforcement should only follow a review of existing state enforcement of the National Minimum Wage regulations and 'naming and shaming' policy. The inconsistent enforcement and unclear interpretation of National Minimum Wage regulations by HMRC officers has caused problems for businesses across sectors, some of whom have been subsequently 'named and shamed' for technical, unintentional payroll errors. The interpretation of the Regulations should be reviewed, and new guidance published to prevent avoidable breaches and renew business confidence.

We believe 'naming and shaming' should target unscrupulous employers and not punish responsible businesses who unwittingly make genuine errors against the regulations and take steps to overturn them. The Government should consider increasing the threshold for 'naming and shaming' of employers from a simple monetary threshold to a more complex threshold taking into account intent. ACS has raised concerns directly with the BEIS labour markets team on interpretation of the regulations, see Annex B for more detail.

#### **5. What other measures, if any, could government take to encourage workers to raise concerns over these rights with their employer or the state?**

Working environments should facilitate open conversations between employers and employees about employment rights. The statutory sick pay system should be reformed to encourage better communications between employers and employees and deliver more effective returns to work after periods of sick leave absence. Retailers report that existing guidance on statutory sick pay is too complex to interpret and we support DWP's commitment to better publicise existing guidance on eligibility for statutory sick pay and the associated rights and responsibilities for employers and employees<sup>12</sup>.

The upcoming consultation on policy reform should consider the Taylor Review's recommendation for statutory sick pay to become an accrued employment right based on length of employment. This could reduce the costs of statutory sick pay for employers and ensure equal treatment of employees.

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<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF) p32

The 'Fit Note' system supporting statutory sick pay can act as a barrier to ongoing conversations between employers and employees during periods of sick leave. Fit Notes should facilitate conversations between employers and employees by detailing what work can be completed by an employee from their normal working duties. This would prevent retailers feeling unable to approach employees to discuss returning to work due to poor understanding of what tasks an employee may or may not be able to complete in the workplace from vague Fit Notes.

We support the Government's intention to develop a set of competencies for occupational health professionals completing Fit Notes. Backdated Fit Notes should not cover a period where the worker has not been personally assessed and should be limited to one week to encourage legitimate and up to date assessments.

## Annex A

### ABOUT ACS

The Association of Convenience Stores (ACS) lobbies on behalf of around 30,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary roads, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.

**ACS** | the voice of local shops

### WHO WE REPRESENT

#### INDEPENDENT RETAILERS



ACS represents 22,597 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to government policy decisions.

These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent farm-run operators are included in this category.

#### SYMBOL GROUPS AND FRANCHISES



ACS represents 14,559 retailers affiliated with symbol groups. Symbol groups like SP4K, Next, Costcutter, Sainsbury, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits.

Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

#### MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents 12,602 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, M&S, Lidl, Aldi and others.

Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiple and convenience-operated stores are included in this category.

### THE CONVENIENCE SECTOR



In 2017, the total value of sales in the convenience sector was £58.1bn.

The average spend in a typical convenience store transaction is £6.28.



There are 49,918 convenience stores in mainland UK. 74% of stores are operated by independent retailers, either on their own or as part of a symbol group.



The convenience sector provides flexible employment for around 370,000 people.

24% of independent/symbol stores employ family members only.



30% of shop owners work more than 70 hours per week, while 10% take no holiday throughout the year.

72% of business owners are first time investors in the sector.



Convenience stores and Post Offices are the two services that have the most positive impact on their local area according to consumers and local councillors.

75% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2016 and May 2017 the convenience sector invested over £105m in stores.

The most popular form of investment in stores is refrigeration.

### OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

#### ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 2000 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of focused questions and a number of open-ended ones that differ each time to help inform ACS policy work.

#### ACS INVESTMENT TRACKER

Regular quarterly survey of over 2000 independent and symbol retailers, which is combined with responses from multiple businesses representing over 3,000 stores.

#### ACS LOCAL SHOP REPORT

Annual survey of over 2000 independent, symbol and forecourt retailers, combined with responses from multiple businesses representing 6,251 stores. The Local Shop Report also draws on data from HM, LGO, Nielsen and William Reed.

#### RESPONSE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible trading to live pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

For more information and data sources, visit [www.acs.org.uk](http://www.acs.org.uk)

## Annex B

ACS (the Association of Convenience Stores) represents over 33,500 local shops and forecourts including Co-op, McColls, BP and thousands of independent retailers, many of which trade under brands such as Spar, Nisa and Londis.

ACS signed a joint industry letter earlier in the year calling for a review of National Minimum Wage enforcement regulations and guidance for retailers. We are committed to working with HMRC to ensure good compliance with the National Minimum Wage regulations and would welcome feedback on what factors HMRC consider to be high risk for non-compliance in the retail sector.

We believe 'naming and shaming' should target unscrupulous employers and not punish responsible businesses who unwittingly make genuine errors against the regulations and take steps to overturn them.

The table below provides further information on some of the issues raised by ACS members and where clarification on interpretation of the regulations would be welcomed. For more information, please contact

Subject	Relevant Legislation	Analysis
Salary Sacrifice	National Minimum Wage Regulations 2015, regulation 9	<p>Lower-paid workers cannot benefit from employer salary sacrifice schemes as the regulations dictate these costs must be deducted from pay for NMW calculations. This means only higher paid workers can benefit from the NI savings associated with a lower headline rate of pay when they opt in to a salary sacrifice arrangement. This is despite the potential for lower-paid workers to benefit most from salary sacrifice schemes and reduced NI costs due to their lower headline pay.</p> <p>As a result, the regulations disincentivise employers from adopting salary sacrifice schemes, for example providing childcare vouchers, due to the administrative difficulties they may cause with ensuring NMW compliance. The regulations can also prevent workers from accessing the full range of their employer's salary sacrifice schemes where the cumulative impact of these schemes may be to reduce pay too far for NMW calculation purposes.</p>
Uniforms	National Minimum Wage Regulations 2015, regulations 12 & 13	<p>When considering payments to be deducted from pay for NMW calculation purposes, the regulations carry a distinction between expenses incurred for a colleague to carry out a job for their employer and expenses incurred to secure the job with their employer. The application of this distinction for uniform expenses is unclear and not clearly split between 'required' and 'voluntary' expenses.</p> <p>For example, it is not clear whether uniform costs should be deducted from pay for NMW calculations and how this should be recorded in the following examples:</p> <ul style="list-style-type: none"><li>- Where an employment contract specifies a colleague should wear black shoes, whether they may or may not be reasonably expected to already own black shoes</li><li>- Where an employment contract specifies a colleague should wear 'smart' clothing i.e. smart trousers</li><li>- Where a worker has more than one job and uses a) existing uniform from another job b) uses new uniform in the other job</li></ul>

		<p>Employers would value clear guidance on how to attribute the costs of uniform and reasonably reimburse colleagues for uniform costs when required, for example;</p> <ul style="list-style-type: none"> <li>- whether employers can set a reasonable limit on expenditure incurred they will reimburse</li> <li>- whether they can establish a recommended supplier list for uniform items with or without employer labelling, and</li> <li>- what the process is when a colleague purchases uniform at an unreasonable cost.</li> </ul> <p>It is also unclear how employers can proceed when a colleague cannot provide evidence of their uniform expenditure and how HMRC will view cases where workers do not inform employers that they have incurred expenditure on uniform costs.</p> <p>Guidance could also usefully clarify how uniform costs should be practically deducted for payroll procedures. For example, if the uniform costs must be deducted from pay for NMW calculations in the pay reference period they are purchased, this could bring average pay per hour below the NMW if the colleague works a small number of hours in that pay reference period. Employers would welcome clarification whether uniform costs in this example could be reimbursed in the next appropriate pay reference period.</p>
Working Time	National Minimum Wage Regulations 2015, regulations 30 to 35	<p>The regulations state that overall working hours in a pay reference period for time workers is calculated by adding together time spent working and time treated as worked, including training times. This is complicated by the absence of a definition of work.</p> <p>For example, the regulations do not state whether working time should be extended beyond core working hours when a colleague arrives early or leaves late from their shift, whether actively performing their work duties or being at the employer's premises. The regulations also do not state whether time spent changing into work uniform, either on or off the premises, should be counted as time spent working and, if so, how much time employers should designate to uniform changing times.</p> <p>Clarification on the above may also bring forward queries about how employers should record working time. For example, whether employers should record colleague working hours or use a signing in/signing out system filled out directly by colleagues. The regulations do not state whether this should include time spent working which has not been sanctioned by the employer, for example starting early before a given shift or finishing late after the end of a shift.</p>
Time Off In Lieu (TOIL)	N/A	<p>The regulations do not recognise the TOIL concept, whereby an employer gives a colleague time off work instead of payment for overtime hours previously worked. This prevents lower-paid workers from benefitting from TOIL arrangements which some colleagues prefer to additional pay.</p> <p>Not recognising TOIL in the regulations creates a potential for retailers to be caught out when a colleague works extra hours during one pay reference period but takes TOIL in a different pay reference period. This makes it difficult for retailers to offer TOIL to colleagues, particularly for lower-paid staff who typically are on shorter pay reference periods.</p>

