EXPLANATORY MEMORANDUM TO

DRAFT REVISED CODE OF PRACTICE ON FAIR AND TRANSPARENT DISTRIBUTION OF TIPS

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business, Innovation, Science and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kate Dearden, Minister of State for the Future of Work at the Department for Business, Innovation, Science and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Anthony Morris, Deputy Director for Analysis and Wages at the Department for Business, Innovation, Science and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tony Gordon at the Department for Business, Innovation, Science and Trade can be contacted by email at the following address with any queries regarding the Code of Practice: tipping@businessandtrade.gov.uk. Alternatively, the department can be contacted by telephone: 020 4551 0011.

Part One: Explanation, and context, of the Code of Practice

4. Overview of the Code of Practice

What does the Code of Practice do?

4.1 Following the changes made to the law through the Employment Rights Act 2025, employers are now required to consult with workers at their place of business when developing or revising their written policy on tipping. Where they exist, this consultation should be conducted with trade union representatives or other worker representatives. Employers are also now required to review their written policy at least once every three years.

4.2 The statutory Code of Practice on fair and transparent distribution of tips, which is issued under Section 27P of the Employment Rights Act 1996, has been revised to incorporate these new requirements, and also to take account of developments and views of stakeholders since the existing framework came into effect in October 2024.

Where does the Code of Practice extend to, and apply?

4.3 The extent of this Code of Practice (that is, the jurisdiction(s) in which the Code of Practice has effect) is England and Wales and Scotland.

4.4 The territorial application of this Code of Practice (that is, where the Code of Practice produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The language in the statutory Code of Practice has been strengthened to include the requirement for employers to consult with workers at their place of business when developing or revising their written policy on tipping, and give further context for employers and workers, so that the changes are incorporated in a fair and effective manner. The revised Code of Practice also reflects the requirement for employers to review their tipping policy at least once every three years and takes account of some views expressed by stakeholders and developments since the existing Code of Practice came into effect in October 2024.

5.2 The main policy intention of these changes is to enhance the voices of workers, particularly those who have traditionally had less of a voice in the workplace.

What was the previous policy, how is this different?

5.3 These changes build on the existing Code of Practice, which promotes fair and transparent distribution of tips. In particular, the existing Code of Practice only encourages consultation with workers, whereas the new law means this is now required.

6. Legislative and Legal Context

How has the law changed?

6.1 Employers are now required to consult with workers at their place of business when developing or revising their written policy on tipping. They are required to review their written policy – and carry out a process of consultation – at least once every three years. These changes became law under Section 14 of the Employment Rights Act 2025 and are expected to come into force in January 2027, alongside this Code of Practice coming into effect.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes in the light of the legislation passed in Section 14 of the Employment Rights Act 2025. The revised Code of Practice, issued under Section 27P of the Employment Rights Act 1996, will help to promote fairness and transparency in the distribution of tips, gratuities and service charges.

7. Consultation

Summary of consultation outcome and methodology

7.1 The government carried out a public consultation on tipping between 05 February and 01 April 2026. The government published a revised Code of Practice, and then held a new public consultation on the revised Code of Practice between 19 August and 29 September 2026.

7.2 The views of stakeholders expressed during both of these consultations have informed the changes to the Code of Practice, including implementing the new legal requirements in a fair and effective manner and making amendments where the existing Code of Practice and guidance could be improved. The government response to the public consultation will be published on Gov.UK alongside this draft revised Code of Practice.

8. Applicable Guidance

8.1 Non-statutory guidance about distributing tips fairly is also available on Gov.UK. The Government expects to publish some additional non-statutory guidance in due course.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Code of Practice due to the low level of impact on any particular business.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is expected to be limited and primarily administrative in nature. These requirements build on existing obligations under the Employment (Allocation of Tips) Act 2023, as incorporated in the Employment Rights Act 1996, and provisions of the existing statutory Code of Practice, under which some employers already consult staff voluntarily. As a result, the incremental costs are expected to be modest and relate mainly to familiarisation, conducting periodic consultations, and limited record-keeping.

9.3 The legislation does impact small or micro businesses. To minimise the impact of the requirement on small or micro businesses, the Government has ensured that the measures are proportionate, flexible and aligned with existing practices. The requirements are procedural in nature and can be met through a range of low-cost approaches, such as staff engagement or use of existing communication channels.

9.4 An exemption for small or micro businesses has not been adopted. This is because such businesses make up a substantial proportion of employers in tipping sectors and exempting them would significantly reduce the effectiveness of the policy and undermine the objective that all relevant workers should have a meaningful opportunity to influence tipping policies. Applying the requirements consistently across all business sizes also supports a level playing field and avoids distortions in competition between firms.

9.5 There is no, or no significant, impact on the public sector because tipping is very rare in the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing the Code of Practice?

10.1 The approach to monitoring this legislation is to use administrative data, primarily MoJ tribunal statistics, to look at changes in the volume of claims related to tipping. Moreover, these tipping changes sit within a wider suite of policy changes introduced in the Employment Rights Act 2025, which is subject to a comprehensive monitoring and evaluation plan. We will utilise a rich array of datasets to monitor the outcomes and impacts the Plan to Make Work Pay seeks to achieve across the labour market and work to identify the evidence required to assess progress towards these objectives.

10.2 The Code of Practice is not itself secondary legislation and does not include a statutory review clause under the requirements of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

12.1 The Minister of State for the Future of Work has made the following statement regarding Human Rights: "In my view, the provisions of the Revised Code of Practice on Fair and Transparent Distribution of Tips are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This Code of Practice is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").