

ACS Submission: Employment Status

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy consultation on employment status following the focus of the Taylor Review on achieving clarity and certainty for business when determining employment status. 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 old¹. Staff turnover in the sector is relatively low, with 44% working in their job at a convenience store for over 5 years².

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'³.

Traditional forms of employment remain dominant in the convenience sector and most colleagues are employees with employment contracts and associated rights. This means they are entitled to statutory sick pay, maternity and paternity leave, protection against unfair dismissal, time off for emergencies and the right to request flexible working⁴. There are very few employees in the convenience sector on flexible employment contracts, defined as zero-hour contracts (3%) or short hour contracts⁵ (6%)⁶. The most commonly used band of contracted hours for part-time staff in independent convenience stores is 9 to 16 hours (40%)⁷. This is corroborated by ACS' Colleague Survey 2018 with 42% of staff reporting they have between 9 and 16 contracted working hours per week⁸.

We agree with the consultation at paragraph 2.3 that the current employment status framework works well for most people and most colleagues in the convenience sector are employees with no need to consider the employment status tests. However, we also understand the perspective from the Taylor Review that the framework does not always provide the clarity and certainty required by employers and employees leaving case law to set policy.

¹ ACS Local Shop Report 2017

² ACS Local Shop Report 2017

³ ACS Colleague Survey 2018

⁴ <https://www.gov.uk/employment-status/employee>

⁵ CIPD definition of short hours contract is 4 to 8 hours

⁶ ACS Voice of Local Shop survey August 2017 1,210 retailers

⁷ ACS Voice of Local Shops Survey: August 2017

⁸ ACS Colleague Survey 2018

Commission Operators

There are some examples in the convenience sector where there are alternative arrangements for the operation of sites that use a different business model. There is a 'Commission Operator' model that is used for the operation of some petrol forecourt sites. Commission Operators (also termed 'Contact Managers' by some retailers) are entrepreneurs, who have registered their own business and who partner with fuel retail groups to operate a forecourt convenience store on their premises.

Commission Operators have responsibility for all aspects of the site's employees and associated employment legalities including wages. The Commission Operator is fully responsible for purchasing the shop stock and its associated profits and debts. A capital outlay, in the form of a deposit to the retail fuel group is also normally required under this model, which is returned after the partner agreement is terminated.

The Commission Operator must offer existing in-store staff continuous employment under their current terms as per the Transfer of Undertakings (Protection of Employment) Regulations 1981. It's also important to note that an Employment Tribunal (ET), including Acas, clearly recognise the Commission Operator role as a sole employer of all personnel engaged on the sites. This is a crucial element, particularly during the TUPE process when determining who is indeed the employer.

We do not believe that this business model in the petrol forecourt sector should be impacted by the recommendations of the Taylor Review. 'Commission Operators' are entrepreneurial business owners according to the irreducible minimum, providing their own services but allowed to employ others as per 'personal service', being free to manage their own work tasks as per 'mutuality of obligation' and demonstrating a 'right of control' by autonomously operating the business.

Commission Operators can benefit from additional income based on the turnover, consistency or quality of service at sites but have the freedom to pursue their own objectives for the business, for example prioritising sales by recruiting more staff or sacrificing commission for reduced overheads costs. Commission Operators typically enter into business contracts through their own limited company or as a sole trader.

The irreducible minimum should be codified and amended to reflect the concept of 'financial risk', whereby they can make more profit or incur loss whereas employees are paid in accordance with their employment contracts and employment rights. Commission Operators display financial risk by paying for staffing, stock and covering debts, but also profiting personally when the business is performing well.

ACS' comments below are focused on Chapter 5 on the employment status tests and Chapter 7 on the worker employment status for employment rights.

Chapter 5: Legislating the current employment status tests

Q4) Is codification relevant for both rights and/or tax?

ACS supports the principle of codification of the existing irreducible minimum. This would provide certainty for business and individuals when setting employment status. It would also reduce the use of 'bogus self-employment' in some sectors of the economy whereby employers require an individual to provide their own services, carry out set tasks and control how they are done as per employees, but avoid providing appropriate employment rights to gain an unfair competitive advantage.

This change for the employment status tests would not have a significant impact on the clear majority of businesses in the convenience sector given the prevailing employment practices of most. The inclusion of the principle of 'financial risk' in the codification of employment status (discussed in more detail below) would provide further certainty about employment status for other business models in our sector.

Q15) Should financial risk be included in legislation when determining if someone is an employee?

The irreducible minimum reflects the key principles of the current tests on employment status used in the courts but should be amended to explicitly include the principle of 'financial risk'. Employees are typically paid whatever work is done and do not carry the risk of personal financial loss from their work. However, self-employed individuals typically carry financial risk by being able to improve their income through more efficient working and incur loss for poor performance.

We agree that financial risk suggests self-employment. For example the financial risk undertaken by Commission Operators can also result in significant financial reward and the 'entrepreneurial spirit' of self-employment is often linked to risk-taking. Commission Operators are often required to take financial risk by making upfront payments to demonstrate cash flow capabilities for the business, paying fees to secure a site and are responsible for filing their own accounts and registering for VAT and liability business taxes.

Agreements between fuel retailers and Commission Operators clearly specify what payments are expected and the circumstances in which payments may be made from both retailer to operator and operator to retailer. HMRC's employment status manual also clearly states that 'Individuals who risk their own money by, for example, buying assets, bearing their running costs, paying for overheads and materials are likely to be self-employed'⁹. Commission Operators pay for their own stock and overheads and we believe 'financial risk' should be added to the irreducible minimum and codified as a key consideration when setting employment status.

Chapter 7: The worker employment status for employment rights

Q49) Do you consider that any factors, other than those listed above, for 'in business in their own account' should be used for determining worker status?

Commission Operator contracts explicitly state that it is not an employer-employee relationship. We do not believe that Commission Operators should qualify for the 'worker' employment status either and associated rights.

Commission Operators are considered primarily responsible for the failure or success of their business and can incur financial reward or loss in line with their 'entrepreneurial spirit'. They are able to determine working hours for themselves as well as their staff and recruit and set employment practices personally. Commission Operators use their own finances to buy stock and equipment and carry a clear financial risk.

A Commission Operator has the freedom to enter into Agreements with more than one partner and operate a number of petrol forecourt sites, showing that they are not dependent on the fuel retailer and so not equivalent to a 'dependent contractor' or worker as referenced by the Taylor Review.

⁹ <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0541>

Annex A

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of around 50,000 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 parades, 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 22,397 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions.

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

SYMBOL GROUPS AND FRANCHISES



ACS represents 14,659 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, 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 12,862 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls, Conviviality Retail and others.

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

THE CONVENIENCE SECTOR



In 2017, the total value of sales in the convenience sector was £38bn.

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 unaffiliated 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.



20% of shop owners work more than 70 hours per week, while 19% take no holiday throughout the year.

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



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

79% 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 £858m 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 1200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1200 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 2400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 6,291 stores. The Local Shop Report also draws on data from HIM, IGD, Nielsen and William Reed.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low 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