

## Department for Business & Trade – UK Government

**Retained EU Employment Law:** Consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations.

(Link to consultation page: <https://www.gov.uk/government/consultations/retained-eu-employment-law-reforms>)

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5<sup>th</sup> July 2023

To whom it may concern,

### Retained EU Employment Law consultation 2023

The Scottish Grocers' Federation (SGF) is the leading trade association for the Scottish Convenience store sector. There are 5,098 convenience stores in Scotland, which includes all the major symbol groups, co-ops, and convenience multiples in Scotland ([Scottish Local Shop Report 2022](#) (SLSR 2022)).

SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities. In total, convenience stores provide around **49,000 jobs in Scotland** (SLSR 2022).

Convenience stores trade across all locations in Scotland, providing a core grocery offer and expanding range of services in response to changing consumer demands close to where people live. The valued services provided by local shops include bill payment services (78%), cashback (70%), and branches of the Post Office network (27%) (SLSR 2022).

Over the past year, the UK convenience sector contributed over £9.7bn in GVA and over £9bn in taxes (SLSR 2022). Modern convenience stores are community assets and now more than ever have an increasingly important role in their local communities. **As local economic multipliers, they are important employers of local staff, with that money**

**often put back into the local community and helping to strengthen local economies.**

While the convenience sector through the efforts made by everyone in the industry remains resilient, it still has **significant challenges to deal in terms of the long-lasting impact of the pandemic, high inflation, interest rates, energy costs and the cost-of-living crisis.**

Retailers are also having to contend with the **ongoing additional burden of new legislation from government.** For example, there are already new measures on the way such as possible restrictions around foods high in fat sugar and salt, tightening rules on advertising and promoting of alcohol products and other items such as vaping products, and potential significant challenges through a period of implementation of a UK wide Deposit Return Scheme.

**It is critical that any potential review of Retained EU Employment Law takes these matters into account.** Simplifying and easing the regulatory burden on retail owners and operators wherever possible.

## CONSULTATION QUESTIONS

SGF welcomes the opportunity to contribute to the consultation exercise and have responded to **questions 1, 2, 9, 13, 14, 15, 16, 17, 18 & 19** below:

### Reducing the administrative burden of the Working Time Regulations

**1. Do you agree or disagree that the Government should legislate to clarify that employers do not have to record daily working hours of their workers?**

- *Agree*

Withdrawing this obligation will have a minimal impact on the convenience retail sector.

While many shop owners (11%) work in excess of 70 hours per week and take no holidays throughout the year (26%), the majority of employed staff work part-time. Only

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30% of staff in convenience retail work over 30 hrs/wk and just 11% work more than 40 hours each week (SLSR 2022).

In a recent SGF survey of Scottish convenience retailers, from March 2023, 72% of respondents highlighted that staff either value or greatly value the ability to work flexibly, in order to meet at-home commitments. With the majority of staff also requiring local employment, as opposed to travelling outside of the local area.

The staffing model also allows flexibility for convenience retailers where working hours may require to be adjusted over the year to reflect changing needs and demands on their business.

For those reasons, the majority of staff in a convenience retail setting are employed on an hourly rate. **Therefore, it is already the case that, in order to meet National Minimum Wage, Statutory Holiday Entitlement, and HMRC employment regulations, employers are required to strictly monitor and record hours worked.**

## 2. How important is record keeping under the Working Time Regulations to either enforcing rights (for workers) or for preventing or defending disputes (for employers)?

- *Neither important nor unimportant*

SGF is not aware of any significant issue or cause of disputes within the Scottish convenience retail sector relating to record keeping.

Across the UK convenience sector, 93% of colleagues have a permanent employment contract and in terms of **job security 72% feel very secure and 69% are satisfied with their job** (SLSR 2022).

### Holiday pay and entitlement reform

## 9. Would you agree that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses?

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- *Agree*

SGF does not foresee any significant issues arising from moving to a single statutory entitlement, and **strongly agrees with the objective of reducing the administrative burden on employers.**

**13. Would you agree that it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period?**

- *Agree*

With one in three new employees remaining in post for less than one year, SGF believes this proposal could help ease the burden on some convenience retailers. Particularly those with a high staff turnover.

Convenience stores in Scotland provide local jobs for local people local people. For many, getting a position in a convenience store provides a route back into a paid job. Employment in the convenience sector offers flexibility to both the employee and the employer. This flexibility can help colleagues that require only temporary employment, a casual working arrangement or seasonal work.

In terms of length of employment in Scottish convenience stores, 27% of employees have been in post for between one to five years while a further 17% have held their job for between six to 10 years and 24% have held their job for more than 10 years.

**14. Are there any unintended consequences of removing the Working Time (Coronavirus) (Amendment) Regulations 2020 that allow workers to carry over up to 4 weeks of leave due to the effects of COVID?**

- *No*

SGF is not aware of any unintended consequences of removing the Working Time (Coronavirus) (Amendment) Regulations. However, we note that, while some flexibility may be appropriate for some businesses, the majority of convenience retailers will require staff to take annual leave within the allotted year. This may be essential for some businesses managing the balance of work force requirements and staff costs.

## 15. Do you think that rolled-up holiday pay should be introduced?

- *Other (please explain)*

**SGF believes that it should be up to individual businesses and employees to decide on the appropriate form of Holiday Entitlement payment.** However, we agree that the option of rolled-up holiday pay should be available if required.

Nevertheless, SGF notes that it is possible that rolled-up holiday pay could have unintended consequences, impacting on staff household budgeting and holiday planning. Namely, some employees could have difficulty saving pre-paid holiday entitlement for the months they are due to be on leave. Likewise, some staff may feel that they cannot afford to take leave if they have not been able to save their holiday pay over the course of the given year.

## 16. Would your existing payroll system be able to calculate holiday pay using the rolled-up holiday pay calculation as well as the 52-week holiday pay reference period?

- *No*

Convenience retail in Scotland includes a significant variety of business models. From small local stores with a sales space of less than 1,000 square feet to multiples and major symbol groups.

**While some business may be able to easily adjust to a move to rolled-up holiday pay it is likely that others would find the change an additional burden.** At a time when many stores and retailers are struggling.

This challenge could be further exasperated if the store employs a number of staff with varying entitlements, due to length of service.

In addition, please see the answer to Question 15.

### **The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

**17. Do you agree that the Government should allow all small businesses (fewer than 50 employees) to consult directly with their employees on TUPE transfers, if there are no employee representatives in place, rather than arranging elections for new employee representatives?**

- Yes

SGF believes that this proposal would have a limited impact on the sector. However, we agree that should be up to individual businesses and employees to come to a decision on the appropriate way to manage TUPE transfers.

In general, convenience stores are smaller than their counterparts in the rest of the UK. There are also more stores per head of population. Therefore, it is likely the case that most independent stores will employ significantly fewer than 50 members of staff.

The sector employs 49,000 people in Scotland, across 5,098 stores. Hence, in most cases, independent stores will employ fewer than nine members of staff. SGF research shows that 45% of convenience retailers employ at least one family member.

It is likely the case that many smaller store owners have a close working relationship with their staff members. Therefore, it may be the case that both the retailer and the staff benefit from the withdrawal of the requirement for a formal employee representative. Where individual staff members are able to raise any concerns directly.

**18. Do you agree that the Government should allow businesses of any size involved with small transfers of employees (where fewer than 10 employees are**

**transferring) to consult directly with their employees on the transfer, if there are no employee representatives in place, rather than arranging elections for new employee representatives?**

- Yes

Please see the answer to Question 17.

**19. What impact would changing the TUPE consultation requirements (as outlined above) have on businesses and employees?**

Please see the answer to Question 17.

SGF trusts that you will find our comments helpful and are happy to engage further with you on this important matter.

Yours sincerely,

Jamie Mackie  
Policy and Public Affairs Officer (**Scottish Grocers Federation**)

- SGF gives permission to the UK Government to publish its consultation response and to share this response internally with other policy departments, that may be addressing the issues discussed.
- SGF is also content to be contacted again in the future, in relation to this consultation exercise.