



## **ACS Submission: Strengthening and simplifying the civil penalty scheme to prevent illegal working**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Home Office consultation on reforming civil penalties to prevent illegal working. The convenience sector provides a valued source of employment to over 372,000 people across the country.

Historically the sector has been a starting point for entrepreneurial immigrant workers looking to start businesses in the UK. The convenience sector has diverse mix or ethnic origins with a 51% of independent convenience store retailers in England indicating they are Asian or Asian British and a range of languages spoken such as Punjabi (22%), Gujarati (16%), Urdu (9%) and Hindi (16%).

The sector also offers a flexible source of employment to employees balancing other commitments. In recent polling<sup>1</sup> retailers indicate that 40% of their staff have care commitments to school age or preschool age and 22% are engaged in part-time or full time study.

Compliance with employment regulations represent a significant burden on retailers, and the employment of immigrant workers is no exception. Large and small retailers alike find the process a significant challenge with a range of documents that can be used to account for having the right to work in the UK. For the smallest retailers without a centralised human resources function the process will be particularly time consuming and challenging. We support measures to streamline the employment process, reduce the number of documents that employers must process and provide employers clarity on their responsibilities.

Illegal working in the UK can be extremely damaging to legitimate businesses, for example hand car washing services that have often be reported to fall short of proper employment regulations, we support the Government's commitment to prevent it. We want to ensure that change to the civil penalty scheme proposed do not unnecessarily impart burdens on legitimate retailers. It is also important that changes to the civil penalties scheme also run parallel with targeted intelligence led enforcement activity for persistent employers of illegal workers.

Relevant consultation questions for the convenience sector have been answered below:

### **1. If an employer breaches the right to work checks on more than one occasion, should a maximum civil penalty of £20,000 per illegal worker be levied?**

We support enforcement activity and the levying penalties against persistent offenders but the penalties system must include an element of flexibility and discretion to distinguish between

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<sup>1</sup> ACS VOLS Report May 2013

premeditated illegal employment activity and genuine errors. Even the most diligent Human Resources team or independent retailer can make errors, and a £20,000 fine is a significant burden and pressure on these businesses. The civil penalties scheme must account for this.

We question the deterrent value of doubling the civil penalties scheme with the existing conversion rates for enforcing and recovering fines. The extent of illegal working is driven by persistent offenders that have little regard for financial penalties. Doubling the civil penalty could have the opposite intention by deterring growth through punishing legitimate businesses for errors in employment processes.

## **2. Should the calculation of civil penalties be simplified as proposed in the consultation?**

The penalties proposed in the revised system could be extremely damaging to a small retailer. A first time offence, that could be the result of ignorance or misinformation, could result in a fine. Whilst the UK's large businesses may, grudgingly, be able absorb this cost small retailers would be crippled. Furthermore, even when a small retailer has worked with enforcement officers to report illegal workers and actively co-operated they could still receive a £5000 fine.

We urge the Home Office to reconsider the penalties that can be issued to a first time offender that has been co-operative with enforcement officers and taken to necessary steps to rectify mistakes.

## **3. Should a warning letter no longer be issued for a first time breach of the right to work checks?**

Warning letters are a valuable tool that should be retained and where possible used more frequently. Where a legitimate employer receives a warning letter they will take action upon it. The process of issuing warning letters should be increased as it will support to distinguish between businesses actively looking to comply with regulations and those which are motivated by criminality.

The use of warning letters should be included in the civil penalties process before an incident is fully elevated to a first time offence and the process of issuing fines begins.

## **4. If an employer has already received one or more civil penalty notices, should these be considered an aggravating factor when determining the current penalty level?**

The use of previous civil penalty notices as an aggravating factor should not be the only factor in determining penalty levels. The turnover of staff, level of engagement and co-operation with enforcement agencies, and the Home Office, and the processes that have been applied must be taken into account.

## **5. What should be the starting point for the calculation of a first civil penalty to act as an effective deterrent to employing illegal workers?**

It is not clear that financial penalties by themselves act as deterrent for businesses that actively look to employ illegal workers. Current data from the Home Office and UK Border Agency does not clearly show the effectiveness of penalties levied against business in deterring them and the enforcement of fines issued and money recovered is low, the average level of fines issue to employers was £8,870 and only 18% were in excess of £10,000<sup>2</sup>.

Proactive enforcement activity at a local and nation level based on intelligence is more likely to be a deterrent to those employers attempting to get a competitive advantage through employing illegal workers.

**6. Would reducing the number of acceptable documents simplify the right to work checks?**

Yes. There is a consensus amongst employers, large and small, that there are too many documents that confuse employers and provide illegal workers with the opportunity to counterfeit documents. Reducing the number of documents and providing clear guidance for employers should be a priority for the Home Office.

ACS is willing to work with the Home Office to develop tailored guidance for small businesses.

**7. Do you support working towards the biometric residence permit being the main acceptable document for right to work checks for most non-EEA nationals?**

Yes.

***For further information on this submission please contact Edward Woodall, ACS Public Affairs Manager: [Edward.woodall@acs.org.uk](mailto:Edward.woodall@acs.org.uk) or 01252 515001.***

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<sup>2</sup> [HANSARD: Illegal Immigrants: Employment – 25.02.13](#)