

EXPLANATORY MEMORANDUM TO
THE PERSONAL PROTECTIVE EQUIPMENT AT WORK (AMENDMENT)
REGULATIONS 2022

2022 No. 8

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Health and Safety Executive on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument will amend the Personal Protective Equipment at Work Regulations 1992¹ (“the PPER 1992”) to extend employers’ and employees’ duties in respect of Personal Protective Equipment (“PPE”) to a wider group of workers, defined to include those who have more casual employment relationships than employees. The instrument will also update references to other legislation contained in the PPER 1992.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is of this instrument is Great Britain. In addition it applies to premises and activities outside Great Britain by virtue of the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013².

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Currently UK health and safety legislation does not have a definition of worker. Worker is defined in section 230(3) Employment Rights Act 1996³. The definition has two limbs, limb (a) and limb (b). Those captured by limb (a) are employees under the Health and Safety at Work Act 1974⁴ (“HSWA”) and are already in scope of the PPER 1992. Limb (b) captures those who generally have a more casual employment relationship and work under a contract for service; this group are known as limb (b)

¹ <https://www.legislation.gov.uk/uksi/1992/2966/contents/made>

² <https://www.legislation.gov.uk/uksi/2013/240/contents/made>

³ <https://www.legislation.gov.uk/ukpga/1996/18/contents>

⁴ <https://www.legislation.gov.uk/ukpga/1974/37/contents>

workers and do not currently come under the scope of the PPER 1992. This instrument creates its own definition of worker intended to capture both of these groups.

- 6.2 The Independent Workers' Union for Great Britain brought a judicial review case against the Secretaries of State for the Department for Work and Pensions and the Department for Business, Energy and Industrial Strategy where the Health and Safety Executive was an Interested Party⁵. The High Court found that the UK had failed to fully implement two EU Directives, the Health and Safety Framework Directive⁶ (89/391/EEC) and the Personal Protective Equipment Directive⁷ (89/656/EEC), in domestic law, as protections were only applied to employees, whilst the court held, they should also extend to limb (b) workers. Limb (b) workers tend to have a more casual employment relationship and are entitled to a basic set of rights.
- 6.3 The Independent Workers' Union for Great Britain brought a judicial review case against the Secretaries of State for the Department for Work and Pensions and the Department for Business, Energy and Industrial Strategy where the Health and Safety Executive was an Interested Party⁸. The High Court found that the UK had failed to fully implement two EU Directives, the Health and Safety Framework Directive⁹ (89/391/EEC) and the Personal Protective Equipment Directive¹⁰ (89/656/EEC), in domestic law, as protections were only applied to employees, whilst the court held, they should also extend to limb (b) workers. Limb (b) workers tend to have a more casual employment relationship and are entitled to a basic set of rights.

7. Policy Background

What is being done and why?

- 7.1 PPE is defined in the PPER 1992 as “all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects the person against one or more risks to that person’s health or safety, and any addition or accessory designed to meet that objective.”
- 7.2 The PPER as currently drafted does not align with the High Court judgment. This instrument will extend the PPER 1992 to limb (b) workers and will provide additional clarity to businesses and workers in respect of PPE provision and duties.
- 7.3 The duties under the PPER 1992 apply whilst an employee is at work. Section 52 of the Health and Safety at Work etc. Act 1974 provides the meaning for “work” and related expressions. This instrument modifies the application of section 52 to the PPER 1992 to extend the meaning of work to capture all workers, as defined in this instrument.
- 7.4 Section 9 of the Health and Safety at Work Act 1974¹¹ places a general duty on employers not to charge employees for things done in pursuance of specific requirements of the relevant statutory provisions. This applies to requirements under the PPER 1992 as it is a relevant statutory provision. This instrument modifies the

⁵ <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3050.html>

⁶ <https://osha.europa.eu/en/legislation/directives/the-osh-framework-directive/1>

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31989L0656>

⁸ <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3050.html>

⁹ <https://osha.europa.eu/en/legislation/directives/the-osh-framework-directive/1>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31989L0656>

¹¹ <https://www.legislation.gov.uk/ukpga/1974/37/section/9>

application of section 9 to the PPER 1992 to ensure that limb (b) workers are not charged for PPE provided to them to ensure equality in the provisions between employees and limb (b) workers.

- 7.5 This instrument does not provide for any additional duties in the Personal Protective Equipment at Work Regulations 1992 (“the PPER 1992”). The following existing obligations and requirements on employers and employees under the PPER 1992 will be extended to limb (b) workers:

Regulation 4 requires an employer to provide suitable personal protective equipment (“PPE”) to an employee where risks to the employee’s health and safety cannot be controlled by other means.

Regulation 5 requires an employer to ensure that where two (or more) pieces of PPE are worn simultaneously, they are compatible with each other.

Regulation 6 specifies that before choosing any PPE an employer is required to make an assessment to determine whether the PPE they intend to provide will be suitable.

Regulation 7 requires employers to ensure that any PPE provided to their employees is maintained, or cleaned/replaced, as needed.

Regulation 8 requires an employer to ensure appropriate accommodation is provided for the when it is not being used.

Regulation 9 requires employers to ensure that suitable information, instruction and training is provided to their employees who are required to wear PPE.

Regulation 10 requires employers to take all reasonable steps to ensure that PPE they provided is properly used. Employees are required to ensure the PPE they are provided is used in accordance with the training and instructions they are given, and take reasonable steps to ensure the PPE is returned to the accommodation provided after use.

Regulation 11 requires employees to report the loss or defect of PPE that has been provided to them.

- 7.6 This instrument also updates references to other legislation contained in the PPER 1992 which are out of date; the Control of Lead Regulations 1980¹², the Control of Substances Hazardous to Health Regulations 1988¹³, and the Health and Safety (Application Outside Great Britain) Order 1989¹⁴.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate legislation

10. Consultation outcome

- 10.1 A public consultation ran from 19th July until 17th August 2021. This four-week period is shorter than the Health and Safety Executive would normally consult. This is

¹² <https://www.legislation.gov.uk/uksi/1980/1248/made>

¹³ <https://www.legislation.gov.uk/uksi/1988/1657/contents/made>

¹⁴ <https://www.legislation.gov.uk/uksi/1989/840/made>

because the decision to amend the PPER 1992 has been made by the Secretary of State for Work and Pensions in response to the court judgment. The main aim of the consultation was to raise awareness of the decision and gain insight into potential costs arising from amendments to PPER 1992.

- 10.2 For this reason, it was considered proportionate to consult for a shorter period of time in order to implement changes to the Personal Protective Equipment at Work Regulations 1992 (“the PPER 1992”) as soon as possible to provide legal clarity.
- 10.3 The consultation received 245 online responses and 2 letters. The overall response to the consultation was positive, with the majority of respondents (67%) stating there will be benefits in amending the current regulations, including equal rights for employees and limb (b) workers and increased health and safety protections through standardised personal protective equipment (“PPE”) provision for limb (b) workers.
- 10.4 A small number of concerns were raised during the consultation which included issues in relation to the practical implications of the amendments to the PPER 1992, the quality and standard of PPE being lowered as more of the workforce will require PPE from employers, and also understanding where PPE duties lie where agencies are supplying temporary workers to businesses. These concerns have been addressed in section 7 of the consultation summary response which can be found on the Health and Safety Executive (HSE) Consultation Hub¹⁵.

11. Guidance

- 11.1 Guidance will be published in January 2022 on the HSE website and a HSE e-bulletin will be sent to inform over 200,000 key stakeholders that updated guidance for the Personal Protective Equipment at Work (Amendment) Regulations 2022 is available in advance of this instrument coming into force on 6 April 2022.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is £43.2 million per year. This cost is made up of the average cost of PPE, familiarisation, cleaning, storage, maintenance and training costs.
- 12.2 The impact on the public sector is minimal.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to undertake a post implementation review of this instrument every 5 years from the date it comes into force.
- 14.2 A statutory review clause is included in the instrument in line with the requirements of the Small Business, Enterprise and Employment Act 2015¹⁶.

¹⁵ <https://consultations.hse.gov.uk/hse/cd289-amends-ppe-work-regs-1992/>

¹⁶ <https://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/secondary-legislation-duty-toreview/enacted>

15. Contact

- 15.1 Dipti Kerai at the Health and Safety Executive, Better Regulation and Policy Unit, Telephone: 020 3028 3222 or email: dipti.kerai@hse.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Kate Haire, Head of Regulation, International and Major Hazards Policy, at the Health and Safety Executive can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chloe Smith, the Minister for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.