



## **Amendments to the Personal Protective Equipment at Work Regulations 1992 Consultation Response**

<b>Executive Summary</b> .....	<b>2</b>
<b>1. Introduction</b> .....	<b>3</b>
i. Previous communications with stakeholders.....	5
ii. Public consultation .....	5
<b>2. Respondent demographics</b> .....	<b>6</b>
i. Who responded to the consultation?.....	6
ii. Business response: Business size by no. of employees .....	7
iii. Business response: % of workforce who are limb (b) workers .....	8
iv. Which sectors do limb (b) workers work in? .....	9
v. What type of work do limb (b) workers tend to do? .....	10
vi. Limb (b) workers that work with employees .....	11
<b>3. Who pays for and provides PPE currently?</b> .....	<b>12</b>
<b>4. Costs</b> .....	<b>14</b>
iii. Average cost of purchasing PPE .....	14
iv. Familiarisation.....	15
v. Suitability.....	16
vi. Cleaning and Maintaining .....	17
vii. Training.....	18
<b>5. Other costs</b> .....	<b>18</b>
<b>6. Benefits</b> .....	<b>19</b>
<b>7. Wider concerns/issues raised during consultation</b> .....	<b>20</b>
<b>8. Understanding what the amendments to PPER 1992 means for workers, businesses and representatives</b> .....	<b>22</b>
<b>9. Possible effects of the proposed PPE amendments</b> .....	<b>22</b>
<b>10. Conclusion</b> .....	<b>23</b>



## Executive Summary

This consultation relates to the proposed amendments to the Personal Protective Equipment at Work Regulations 1992<sup>1</sup> and was open for responses for a four-week period from Monday 19<sup>th</sup> July to Tuesday 17<sup>th</sup> August 2021.

The UK implemented Article 3 of EU Directive 89/656/EEC<sup>2</sup> (“the PPE Directive”) through the Personal Protective Equipment at Work Regulations 1992 (“the PPER 1992”) which places duties on employers to their ‘employees’ in regard to PPE (Personal Protective Equipment). In November 2020, the High Court found that the PPE Directive required these duties to be extended to limb (b) workers and not only employees. The PPER 1992 and its interpretation as a result of the judgment is retained EU law. The judgment means that judges interpreting the provisions of the PPER 1992 in a case between an employer and limb (b) worker, would do so in light of the court’s findings of November 2020. HSE is making amendments to the PPER 1992 in order to align with the court’s judgment and provide clarity for workers and employers.

In the UK, the Employment Rights Act 1996<sup>3</sup> (“ERA 1996”) defines worker. The definition has two limbs, (a) and (b), limb (a) captures those with a contract of employment. This group are employees under the Health and Safety at Work etc. Act 1974<sup>4</sup> (“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) workers and do not currently come under the scope of the PPER 1992.

Generally, limb (b) workers:

- carry out casual or irregular work for one or a number of organisation(s),
- receive holiday pay, but not other employment rights such as the minimum period of statutory notice, after one month of continuous service
- only carry out work if they choose to
- have a contract or other arrangement to do work or services personally for a reward (the contract doesn’t have to be written) and they only have a limited right to send someone else to do the work, for example, swapping shifts with someone on a pre-approved list (subcontract)
- are not in business for themselves (they do not advertise services directly to customers who can then also book their services directly)

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*”

---

<sup>1</sup> [The Personal Protective Equipment at Work Regulations 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [EUR-Lex - 31989L0656 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/ui/html.do?uri=EUR-Lex:L0656:EN:EUR-Lex)

<sup>3</sup> [Employment Rights Act 1996 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>4</sup> [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://www.legislation.gov.uk)



*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."*

The duties under the PPER 1992 apply whilst the employee is at work. The employer's duties include the assessment and provision of PPE free of charge (where it is found necessary during a risk assessment), ensuring PPE is suitable for use, the maintenance

and replacement of PPE, and other duties around the information, instruction, training, and use of PPE. The employee's duties under the PPER 1992 are to report loss and defects in the PPE which they are provided, use the PPE in accordance with the training and instruction provided, and to ensure PPE is returned to the accommodation provided by the employer.

The amendments to the PPER 1992 will potentially affect any industry sector in which employers engage limb (b) workers. This includes the transport, construction, health and social care, agriculture and manufacturing sectors, amongst others. The aim of the consultation was to raise awareness and understanding of the proposed amendments as well as to seek the views of stakeholders in order to assess the likely costs, benefits and wider impacts of the amendments. Responses have also been analysed as part of a wider impact assessment to verify data and evidence gathered via an initial YouGov worker survey and social research undertaken by HSE.

The overall response to the consultation was positive, with the majority of respondents stating there will be benefits in amending the current regulations, including enhanced health and safety protections through standardised PPE provision for limb (b) workers. 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 risk that the quality and standard of PPE is 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 this response.

All respondents were asked if they understand what the amendments to the PPER 1992 will mean for them, their business or their industry. There were 58 responses from a possible 245 responses to this question and the majority of those 58 respondents (82.8%) said they understand the regulations.

Following the consultation and the publication of this summary, HSE proposes making secondary legislation to make changes to the PPER 1992 in Parliament in early 2022 to ensure limb (b) workers are provided with the same PPE protections as employees.

## **1. Introduction**

This report presents a summary of the outcome of the public consultation on proposals to amend the PPER 1992 by extending the scope to include limb (b) workers. A number of questions were asked to stakeholders which were designed to inform and validate



cost assumptions that were made in an initial consultation stage impact assessment<sup>5</sup>. The final impact assessment estimates likely costs, benefits and wider impacts of the amendments and will be published alongside the amendments to PPER 1992 on [legislation.gov.uk](http://legislation.gov.uk).

PPE is defined in the regulations 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.”

In the UK, the ERA 1996 defines worker. The definition has two limbs, (a) and (b), limb (a) captures those with a contract of employment. This group are employees under the Health and Safety at Work etc. Act 1974 (“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) workers and do not currently come under the scope of the PPER 1992.

Generally, limb (b) workers:

- carry out casual or irregular work for one or a number of organisation(s),
- receive holiday pay, but not other employment rights such as the minimum period of statutory notice, after one month of continuous service
- only carry out work if they choose to
- have a contract or other arrangement to do work or services personally for a reward (the contract doesn’t have to be written) and they only have a limited right to send someone else to do the work, for example, swapping shifts with someone on a pre-approved list (subcontract)
- are not in business for themselves (they do not advertise services directly to customers who can then also book their services directly)

‘Worker’ is not currently defined in the PPER 1992, and so the amending regulations will draw on the definition of worker from s230(3) of the ERA 1996<sup>6</sup>. The proposed definition in the amendments to PPER 1992 is as follows:

*“worker” means an individual who has entered into or works under—*  
*(a) a contract of employment; or*  
*(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*  
*and any references to a worker’s contract shall be construed accordingly.*

---

<sup>5</sup> [PPE consultation stage impact assessment](#)

<sup>6</sup> [Employment Rights Act 1996 \(legislation.gov.uk\)](http://legislation.gov.uk)



## **i. Previous communications with stakeholders**

Ongoing stakeholder engagement since the court judgment has been an integral part of understanding the implications of the proposed amendments. HSE contacted representatives from the IWGB, as well as engaging with key stakeholders such as industry leaders in the construction, manufacturing, agriculture and waste and recycling sectors, and unions who provided their views and raised awareness of the proposed changes. This enabled HSE to receive valuable insight on the key issues and wider impacts for stakeholders and obtain evidence of potential implementation costs that HSE would explore during public consultation.

## **ii. Public consultation**

The formal public consultation ran from 19<sup>th</sup> July until 17<sup>th</sup> August 2021. This four-week period is shorter than HSE would normally consult. This is because the decision to amend the PPER 1992 has been made by the Secretary of State for the Department of Work and Pensions in response to a court judgment handed down in November 2020, and the main aim of the consultation was to raise awareness of the decision and gain insight into potential costs arising from the amendments to PPER 1992. For this reason, it was considered proportionate to consult for a shorter period of time in order to implement changes to the PPER 1992 as soon as possible.

Prior to the consultation being launched, HSE policy sector leads identified key stakeholders. HSE informed these stakeholders of the proposed amendments and the aim of the consultation. A HSE E-bulletin was also sent to stakeholders in more than 20 industries including cleaning, diving, education, entertainment and leisure, health and social care services, ports and logistics, schools and waste and recycling. It also reached local government, health & safety representatives and enforcement authorities. This e-bulletin was opened/clicked on by 89,723<sup>7</sup> stakeholders.

Respondents were encouraged to reply using the online questionnaire; general narrative responses were also received from respondents and these are included in the consultation analysis. This analysis is designed to be read in conjunction with the consultation and related information at: [CD289 - Amendments to the Personal Protective Equipment at Work Regulations 1992 consultation - HSE Consultation Hub](#).

HSE received 245 responses to the consultation and two letter responses. Not all respondents answered every question, and similarly, not all gave comments that supported their response. A proportion of the consultation was left unanswered by many respondents. Responses from those who identified as limb (b) workers were proportionately low in comparison to responses from businesses and their representatives.

---

<sup>7</sup> This number includes multiple 'opens' by the same individual, as well as any opens where recipients have forwarded on the bulletin to colleagues/contacts who would not have received the bulletin initially.



This consultation response is not considered representative of all the potential impacts of the proposed amendments to PPER 1992. Responses are considered indicative of impacts as a result of the method of data collection being prone to self-selection bias. All evidence presented in this consultation response summary is therefore only indicative of parties affected and does not necessarily represent full impacts of the proposed regulation amendment.

## 2. Respondent demographics

### i. Who responded to the consultation?

An opening mandatory question asked what capacity the respondent was responding in, and then stakeholders were asked a series of questions based on their response.

Respondent category	No. of responses
A worker	85
An organisation that represents workers	9
A company/business	73
An organisation that represents industry/business	13
Other	65
<b>Total</b>	<b>245</b>

Of the 245 online responses, 35% were from workers and 30% businesses and 27% responded 'Other'. The breakdown of those who responded 'Other' is below and was mainly made up of health and safety professionals, consultants and trainers. This category also included responses from a Local Authority, an occupational health physician, and an environmental health representative, as well as a regulator.

Breakdown of 'other'	No. of responses
H&S professionals	17
H&S consultant/trainer	14
H&S manager	8
Other (charities and interested parties)	8
Safety advisor	8
Public and third sector	3
Worker or worker representative	3
Managers	3
Self employed	1
Business	0
<b>Total</b>	<b>65</b>



## Workers and Worker Representatives

A question was asked to both workers and their representatives to determine whether a) the worker was a limb (b) worker, or b) the representative was specifically representing limb (b) workers<sup>8</sup>. Although 85 workers responded to the consultation, only 6 of these workers regarded themselves to be limb (b) workers and therefore fall into scope of the proposed amending regulations. Eight of the 9 representatives of workers said their organisations represented limb (b) workers.

Limb (b) worker	6 (of 85 workers)
Limb (b) worker representative	8 (of 9 workers' representatives)
<b>Total</b>	<b>14</b>

Together there are 14 responses from workers and their representatives that fall into scope. In total that makes up 6% of all 245 responses. This low response rate from workers who identify as limb (b) workers introduced analysis difficulties; and allowed for little detail to be gathered other than what sectors and areas they may work in.

## Business and Business Representatives

38 of 73 businesses said they currently have limb (b) workers and 7 of 13 business representatives said they represent businesses that have limb (b) workers.

Businesses with limb (b) workers	38 (of 73 businesses)
Representatives of businesses with limb (b) workers	7 (of 13 business representatives)
<b>Total</b>	<b>45</b>

Specific questions were devised for these 2 categories of respondents that focused on related costs of PPE, familiarisation, assessing PPE suitability, and cleaning and maintenance that are summarised in section 4.

### ii. Business response: Business size by no. of employees

The categories of businesses by size (or by number of employees) with the most limb (b) workers was 7 responses between 100-249 and 6 responses between 250-499. Small and micro business were in the minority of responses. All other businesses had either 2 or 3 responses.

---

<sup>8</sup> As Employment Status for employment rights is complex to determine and spans a wide range of different working relationships, individuals or limb (b) workers responding to the consultation may have not been able to identify with the simplified characteristics of limb (b) workers defined during the consultation. For example, if an individual misinterpreted one of the characteristics around a limb (b) worker this may have impacted their response



Business size (no. of employees)	No. of business responses
10,000 – 49,999	3
5,000 – 9,999	3
2,000 – 4,999	3
1,000 – 1,999	3
500 - 999	2
250 - 499	7
100 - 249	6
50 - 99	2
20 - 49	5
10 - 19	2
5 - 9	1
2-4	1
1	0
<b>Total</b>	<b>38</b>

**iii. Business response: % of workforce who are limb (b) workers**

36 of 38 businesses with limb (b) workers responded to this question. 53% of businesses that have limb (b) workers said that their workforce is comprised of between 1-10% of limb (b) workers, with fewer than 4 responses for any other range. One business said all of its workforce were limb (b) workers, and 2 businesses said 91-99% of their workforce were limb (b) workers.

% of Limb (b) workers in workforce	No. of responses
All are limb (b) workers (100%)	1
Between 91% and 99%	2
Between 81% and 90%	1
Between 71% and 80%	0
Between 61% and 70%	3
Between 51% and 60%	1
Between 41% and 50%	2
Between 31% and 40%	2
Between 21% and 30%	0
Between 11% and 20%	5
Between 1% and 10%	19
<b>Total</b>	<b>36</b>





#### iv. Which sectors do limb (b) workers work in?

The sectors where limb (b) workers are found are important in order to understand the types of PPE that may be required; and which employers may have to start providing PPE if they are not already doing so.

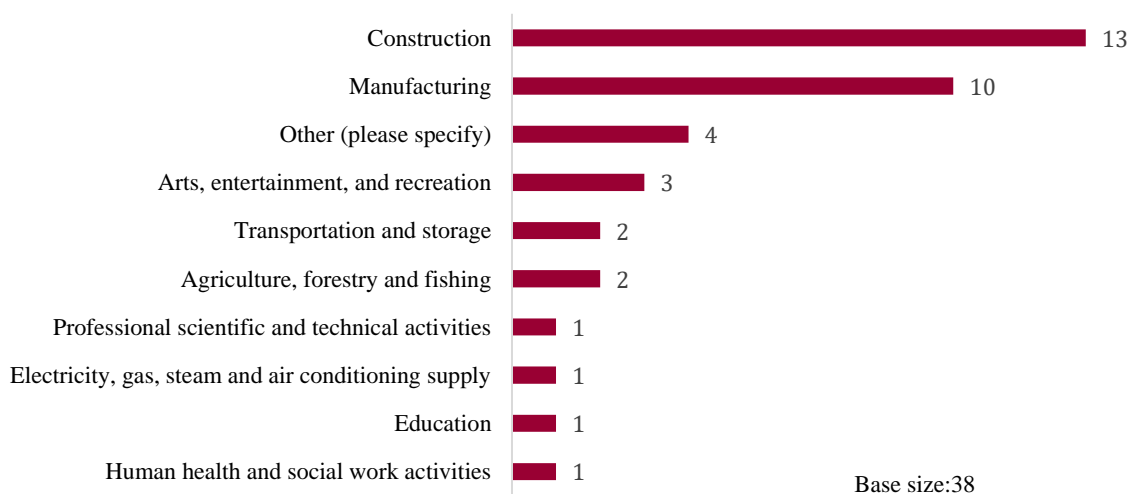
One of the questions in an initial YouGov worker survey, conducted prior to consultation to support the consultation stage impact assessment, was designed to gain an understanding of what sectors limb (b) workers work in. Assumptions could not be made based on responses to the worker survey due to a proportionately low response rate, and therefore this question was asked in the consultation in order to inform the final impact assessment.

#### Workers and worker representatives

Not all limb (b) workers or their representatives that responded to this consultation question identify what sectors limb (b) workers are found in. Of those who did respond, the main sectors identified were construction and transportation and storage, followed by professional and technical activities, arts and entertainment, and manufacturing. 50% of limb (b) worker respondents have said they work in 'other' sectors, which included the wind industry, risk-management, a Local Authority and field ecology and geology.

#### Businesses with limb (b) workers

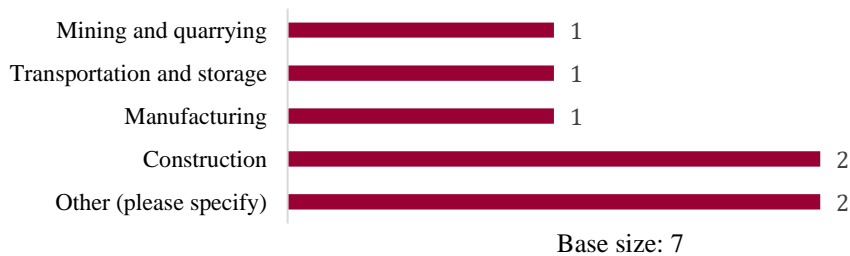
All 38 businesses who said they have limb (b) workers responded to the question of which sector they operate in; the majority of respondents indicated that they are part of the construction and manufacturing sectors, and 4 responded with 'other' (total facilities management, provision of social housing including repairs and maintenance, public transport, waste, water and energy).





### Organisations representing businesses with limb (b) workers

All 7 organisations that represent businesses with limb (b) workers responded to the question if which sector they operate in. One organisation specified cleaning under 'other'.

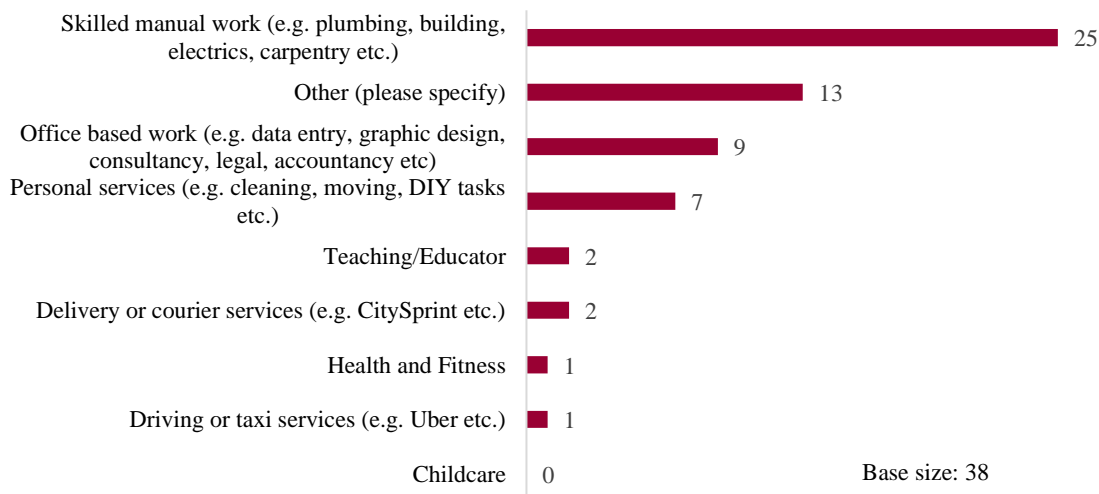


Although overall responses do indicate that a large number of limb (b) workers may be in the manufacturing and construction sectors, the research undertaken for the impact assessment shows that limb (b) workers can be found in many different sectors; it is possible there is response bias here, as it is possible that more businesses that have limb (b) workers who require PPE will have responded to this consultation, rather than those businesses who have limb (b) workers who do not require any PPE and will therefore not be affected by the amending PPE regulations.

### v. What type of work do limb (b) workers tend to do?

#### Businesses with limb (b) workers

This question was asked in a tick box format and businesses were asked to select **all** of the types of work their limb (b) workers may undertake. While there are 38 responses to this question, each of these individuals may have selected more than one role for their limb (b) workers, which increases the items selected to 60.



\*Respondents were able to select multiple items, so total responses differ from items selected.

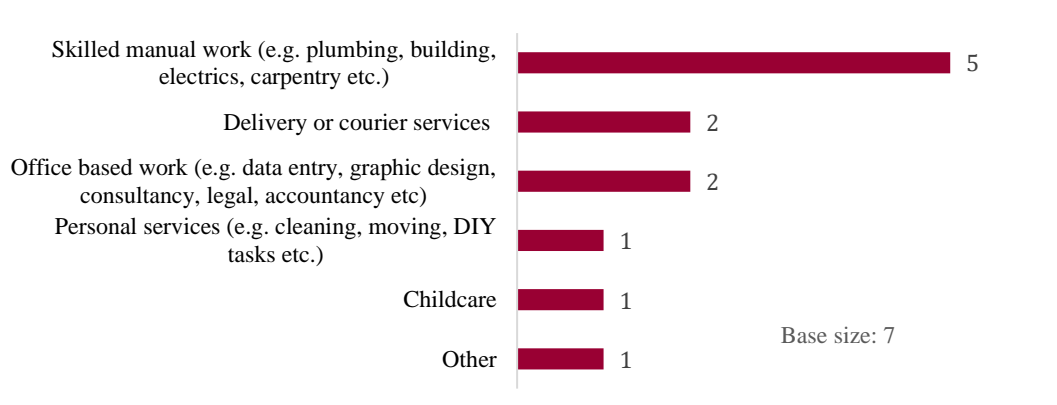


Of the 38 businesses that responded to this question, the top three types of work selected that limb (b) workers tend to do were skilled manual (25); 'other' (13); and office-based work (9).

Eleven of the 13 'other' types of work selected included detailed text responses such as: self-employed or fixed term contract workers, or workers operating through shell companies; unskilled manufacturing; waste treatment and collection, water treatment; customer assistance; provision of care; factory operatives and simple manual tasks; unskilled manual work; agricultural & farm work; bar work and landscape management; and catering and hospitality.

### Organisations representing businesses with limb (b) workers

Of the organisations that represented businesses with limb (b) workers, 5 said limb (b) workers do skilled manual work, 2 said office-based work and 2 said delivery or courier services.



\*Respondents were able to select multiple items, so total responses differ from items selected.

### vi. Limb (b) workers that work with employees

All respondents were asked, "In your experience, do limb (b) workers and employees tend to work alongside each other on the same tasks? - Please choose one". Respondents were able to select 'Yes', 'No', 'Sometimes', and 'Don't know / Unsure'.

### Businesses and organisations representing businesses with limb (b) workers:

All responses Limb (b) who work with employees	Counts	%
All responses that 'Yes' limb (b) workers work with employees.	19	42%
All responses that 'Sometimes' limb (b) workers work with employees.	24	53%
All responses that 'No' limb (b) workers work do not work with employees.	2	4%



All responses that 'didn't know/ unsure' if limb (b) workers work with employees.	0	0%
Sum of all responses that selected limb (b) workers 'sometimes' work with employees or 'yes' always work with employees.	43	96%**
<b>Total*</b>	<b>45</b>	

\*Respondents were able to select multiple items, so total responses differ from items selected.

\*\*Figures do not sum due to rounding.

### Limb (b) workers and organisations representing of limb (b) workers:

All responses Limb (b) who work with employees	Counts	%
All responses that 'Yes' limb (b) workers work with employees.	9	64%
All responses that 'Sometimes' limb (b) workers work with employees.	4	29%
All responses that 'No'. Limb (b) workers work do not work with employees.	1	7%
All responses that 'didn't know/ unsure' if limb (b) workers work with employees.	0	0%
Sum of all responses that selected limb (b) workers 'sometimes' work with employees or 'yes' always work with employees.	13	93%**
<b>Total*</b>	<b>14</b>	

\*Respondents were able to select multiple items, so total responses differ from items selected.

\*\*Figures do not sum due to rounding.

For all responses, approximately 95% of businesses or their representatives report that their limb (b) workers work with employees some or all of the time.

### 3. Who pays for and provides PPE currently?

The table below shows there was a general lack of agreement as to whether employers provide PPE to limb (b) workers. There was a proportionately lower response rate from limb (b) workers and their representatives. There were 6 limb (b) worker responses, 8 responses from limb (b) worker representatives, 38 responses from businesses and 7 responses from representatives of businesses who have limb (b) workers.



	<b>PPE bought by limb (b) workers</b>	<b>Counts*</b>	<b>PPE bought by employer</b>	<b>Counts*</b>
Limb (b) workers and reps	83%	35	17%	7
Business and business reps	25%	44	75%	131
<b>Total</b>	<b>37%</b>	<b>79</b>	<b>63%</b>	<b>138</b>

\*Respondents were able to select multiple items, so total responses differ from items selected.

### Top 3 PPE items limb (b) workers require and who pays for them

#### Limb (b) workers and their representatives' responses

The top 3 PPE items that limb (b) workers and their representatives said they require were gloves, safety boots and high-visibility jackets. The majority stated they provide and pay for their own PPE.

<b>Limb (b) workers and representatives*</b>		
<b>Top 3 PPE items required</b>	<b>Business Pays</b>	<b>Limb (b) worker pays</b>
Gloves (general handling)	0	4
Safety Boots (protective caps)	1	4
High-Visibility Jackets	1	3

\*Respondents were able to select multiple items, so total responses differ from items selected.

#### Businesses with limb (b) workers and their representatives' response

The top PPE items businesses and their representatives said limb (b) workers require were safety spectacles, goggles and safety boots. Respondents were able to select multiple items, so total responses differ from items selected.

Although both agree that safety boots are in the top 3 PPE items required, they disagree on who provides and pays for them: businesses tend to say they provide and pay for PPE; and limb (b) workers say they tend to provide and pay for their PPE.

<b>Business and representatives*</b>		
<b>Top 3 PPE items required</b>	<b>Business Pays</b>	<b>Limb (b) worker pays</b>
Safety spectacles	21	1



Goggles	17	1
Safety Boots (protective caps)	12	1

\*Respondents were able to select multiple items, so total responses differ to items selected.

This disparity could be due to the sectors that responded to the consultation. The sectors that believe they may be most affected by the PPER 1992 amendments are the most likely to respond and the majority of responses for businesses with limb (b) workers and their representatives represented the construction and manufacturing sectors. Businesses and their representatives who responded mostly employed skilled manual workers. Limb (b) workers and representatives who responded mostly undertook tasks other than skilled manual work. Due to low response rate from limb (b) workers and their representatives this breakdown has not been presented.

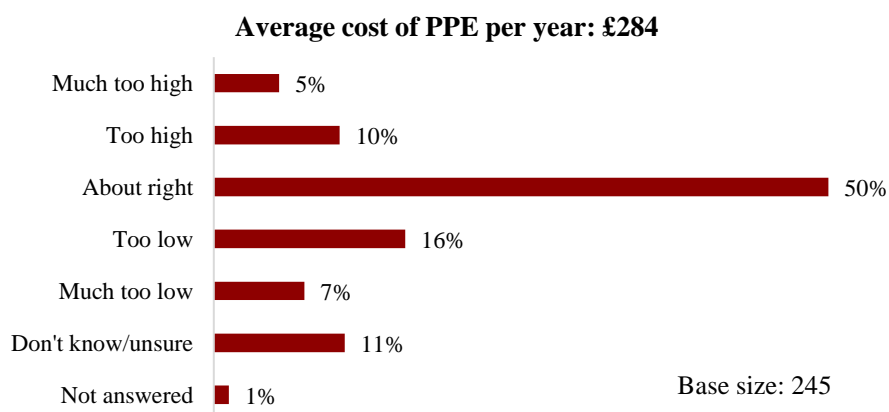
## 4. Costs

### i. Average cost of purchasing PPE

In order to estimate the average cost of PPE per year, HSE collected data from members of the British Safety Industry Federation on retail pricing of PPE; and from a YouGov workers survey to generate an estimate of £284 per year per head.

In order to test this estimate during public consultation, the following question was asked to all respondents:

“We estimate that, on average, the cost of purchasing PPE per worker in GB may be around £284.00 per year or £24.00 per month (figures do not sum due to rounding). Do you think this estimate is: [too high/low etc]”



From 245 responses, 50% of respondents thought that the estimate was about right, 15% said £284 was too high or much too high, 23% said it was too low or much too low, and 11% were unsure.



As a follow up to the above question we invited participants to provide a qualitative response to the question (in addition to the tickbox approach). Of the 98 responses we received for this question, 51 responses provided comments with numerical estimates. Average numerical estimates varied quite widely and most lacked enough context to distinguish whether figures given were monthly or yearly cost estimates. Due to this, these figures should merely be used as a guide to reflect the largest proportion of comments that disagree with the estimate of £284 per year.

Of the 51 comments given with a numerical estimate 43 cited that the cost estimates were too high or too low. Please see below for the breakdown:

- 29 (57%) thought that the estimate of £284 per year was too high.
- 14 (27%) thought that the estimate of £284 per year was too low.

Average cost figures from 5 numerical estimates (with 1 comment discounted as not applicable) was £401.34 per worker. This average cost suggests that the average annual cost of PPE is greater than £284. These comments gave no context to identify if the figure given meant cost per month or cost per year. Therefore, these figures are not generalisable.

However, 33 of these comments provided numerical estimates which explicitly stated a per month or per year cost which suggests an annual average PPE cost of £479 per worker (£44 per month). This average cost suggests that the average annual cost of PPE is greater than £284.

The difference in base sizes between responses to this question and the previous question (where a large proportion of a larger base size said that the cost estimate (£284) was 'about right') provides valid reasoning as to why the cost estimate of £479 would not be considered as accurate. The estimate of £479 relies on a small number of uncertain qualitative responses (33) and we have decided to retain £284 per year as a lower bound for estimating PPE costs in the impact assessment

A final estimate in the impact assessment has been produced using a range of sources as well as the consultation responses and this suggests an estimate of £284 per year is reasonable lower bound. The final best estimate is modestly higher which is supported by the qualitative responses above and can be reviewed in the final published impact assessment.

## **ii. Familiarisation**

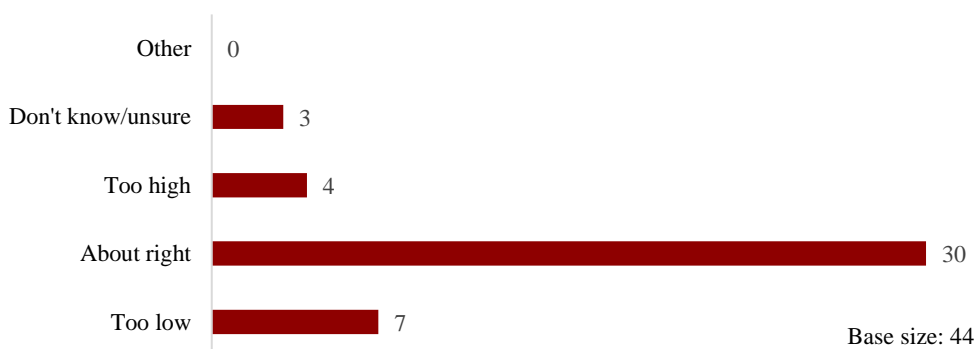
When the PPER 1992 are amended, some organisations will need to spend time understanding what the change means for them, constituting an additional cost to business. HSE experts estimated that it would take approximately one hour for organisations to familiarise themselves with the proposed amendment and supplementary guidance. The following question was asked to all business and



business representatives to test this assumption during public consultation and inform the final impact assessment:

‘We estimate that it will take about 1 hour on average to read and understand the proposed amendment (and the supplementary guidance) to give limb (b) workers the same rights to PPE at work as employees – Please choose one. [too high/too low etc]’.

44 responses were received, 37 from businesses and 7 from business representatives. 68% of respondents said 1 hour is ‘about right’, 9.1% said ‘too high’, 15.9% said ‘too low’, and 6.8% weren’t sure.



A majority of respondents thought that the estimate was about right. Therefore, the assumption can be made that it will take an average of one hour per business to familiarise themselves with the proposed amendments to the PPER 1992.

### iii. Suitability

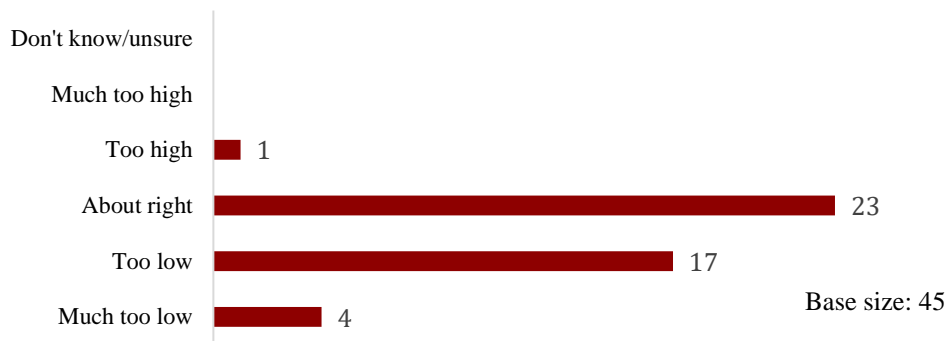
Amendments to the PPER 1992 will place an additional requirement for some employers to assess whether the PPE they provide to limb (b) workers is suitable for a task. For example, all PPE provided to limb (b) workers must comply with British or international standards as part of a suitability assessment.

This must be performed once for each item of PPE provided by an employer for a particular role. For example, should a business have 10 workers each requiring the same item of PPE and performing the same role, the business would have to assess the suitability of this item once for the role, rather than individually for each of the 10 workers.

HSE experts initially estimated that each suitability assessment would take, on average, 30 minutes. The following question was asked to all business and business representatives to test this assumption during consultation:

‘We estimate that assessing the suitability of a new type of PPE might take 0.5 hours (or 30 minutes) per business. Do you think this estimate is [too high/too low etc]?’





45 responses were received – 38 from businesses and 7 from business representatives. 51% agreed it might take 0.5 hours to test the suitability of PPE, and 46.7% said the estimate was too low or much too low. The data gathered from respondents has been used (alongside other sources of evidence) to inform suitability costs in the final impact assessment.

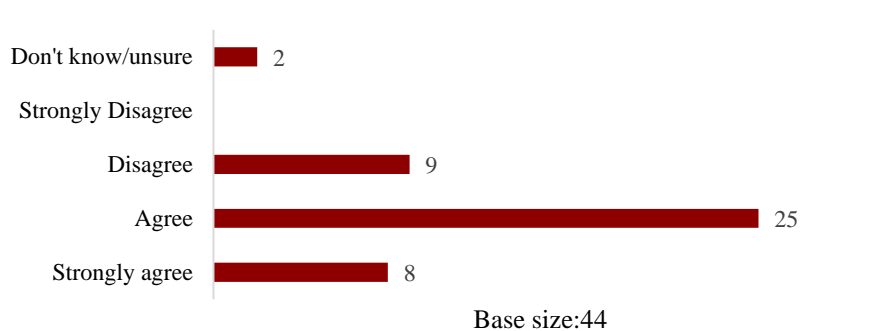
#### iv. Cleaning and Maintaining

Under the proposed amendments to PPER 1992, employers will need to ensure that the PPE they provide to limb (b) workers is maintained and cleaned. The costs associated with maintenance and cleaning will depend on the type of PPE that limb (b) workers require.

HSE experts estimated that, for a typical worker, cleaning and maintenance costs would be minimal compared to the cost of purchasing PPE. The initial YouGov worker survey included a question regarding costs of maintenance and cleaning PPE and analysis also suggested the costs are minimal, and that PPE was often 'maintained' by replacing it.

The following question was asked to all business and business representatives to test this assumption during consultation:

'We estimate that, in the average case, the cost of cleaning and maintaining PPE is minimal compared to the cost of purchasing PPE. Do you [agree/disagree etc]:'





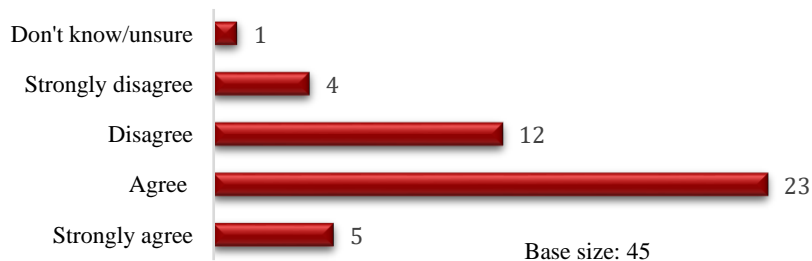
44 responses were received – 38 from businesses and 6 from business representatives. 75% of respondents agreed or strongly agreed that the cost of cleaning and maintaining PPE is minimal compared to the cost of its purchase; and 20% disagreed. The data gathered from respondents has been used (alongside other sources of evidence) to inform cleaning and maintenance costs in the final impact assessment.

## v. Training

Under the proposed PPER 1992 amendments, employers will need to ensure that appropriate information, instruction and training relating to PPE is provided to limb (b) workers, and ensure any PPE provided to their limb (b) workers is properly used. HSE sector experts estimated that the costs relating to this requirement would be minimal compared to the cost of purchasing PPE.

The following question was asked to all business and business representatives to test this assumption during consultation:

‘We estimate that, on average, the cost of training limb (b) workers in the proper use of PPE and then checking that they are using it properly will be minimal compared cost of purchasing that PPE. Do you [agree/disagree etc:]’



45 responses were received – 38 from businesses and 7 from business representatives. 62% agreed or strongly agreed that training and checking PPE is being used correctly will be minimal compared to the cost of purchasing that PPE. 36% of respondents disagreed or strongly disagreed. The data gathered from respondents has been used (alongside other sources of evidence) to inform training costs in the final impact assessment.

## 5. Other costs

All consultation respondents were asked the following: “Are there any other costs related to the proposed amendment to give limb (b) workers the same rights to PPE at work as employees?”. 41% of respondents said they could not foresee any further costs as a result of the proposed PPER 1992 amendments, and 30% said there would be other costs.



Base size: 245

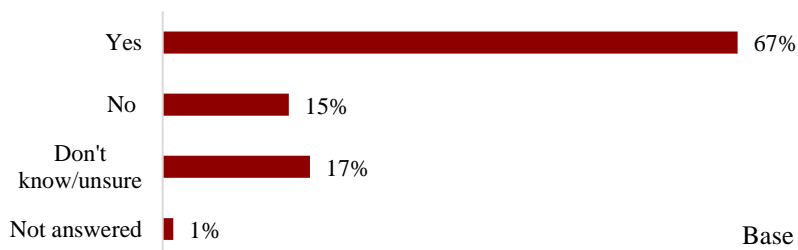
Of the 82 responses that stated there would be additional costs, 28 respondents did not provide any further detail or context on what other costs might be. 54 respondents provided free-text information on what they believe will be additional costs and the table below details those responses.

Other costs	No. of respondents who cited this cost
Familiarisation and Training	22
Purchase and provision of PPE for limb (b) workers <sup>9</sup>	18
Storage of PPE	7
Inspection of PPE	3
Disposal of PPE	2
Off site collection of PPE	2
<b>Total</b>	<b>54</b>

The data gathered in regards to additional costs arising from the amendments to PPER 1992 has been used (along other sources of evidence) to inform the final impact assessment.

## 6. Benefits

All respondents were asked whether they felt there were any benefits related to the proposed amendment to give limb (b) workers the same rights to PPE at work as employees. There were 245 responses – 67% said ‘yes’, 15% said ‘no’ and 17% were ‘unsure’.



Base size: 245

<sup>9</sup> Although HSE considers the purchase and provision of PPE to be the primary cost, it is included here as it was specifically noted by respondents in free text boxes.



A free text box allowed respondents to state what the benefits would be and received 153 comments, some of which named multiple potential benefits. The table below shows the top ten benefits cited by respondents.

<b>Top 10 Benefits of the proposed PPER 1992 amendments cited by respondents</b>	
<b>Benefit</b>	<b>No. of respondents comments</b>
Increased protection/safety	73
Equal rights to PPE for all workers/consistency	54
Standardised PPE	27
Less costs for limb (b) workers	24
Clarity of responsibilities, training and guidance	13
Inclusivity acting as motivation for limb (b) workers	5
Better risk management	4
Better compliance	4
Improved PPE access/use	4
Reputational benefits	4

The data gathered from respondents has been used to inform the final impact assessment and quantify these benefits where possible.

## **7. Wider concerns/issues raised during consultation**

The main concerns raised by a small minority of respondents which are in scope of the proposed PPER 1992 amendments were in relation to the following (with HSE policy responses):

### Practicalities/duplication of providing limb (b) workers with PPE and implications of theft/loss

Concerns were raised about loss of PPE that had been issued to limb (b) workers that was then removed from the workplace and never returned, creating additional costs to the business. Whilst there will inevitably be some PPE that is removed from the workplace and never returned, businesses should provide suitable storage for PPE at the workplace and have systems in place to ensure the storage area is used and company property not stolen.

### Quality of PPE being issued will be lower

A small number of respondents indicated the standard of PPE being provided by employers will become lower as they may potentially have to provide PPE to a larger number of their workforce, and this will be costly.

All PPE, regardless of whether provided to employees or limb (b) workers is required to meet relevant standards, which dictate the minimum requirements for that item of PPE.



Manufacturers of PPE declare that these standards have been met through CE/UKCA marking of the PPE. If an employer provides limb (b) workers with PPE that does not have a CE/UKCA marking, the business will be in non-compliance and likely result in enforcement action.

#### Agency vs employer responsibilities and costs

A number of comments indicated there was confusion with regards to who PPE provision duties lie with when limb (b) workers are recruited by employment businesses on behalf of businesses.

If a limb (b) worker is a temporary worker that has a contract with an employment business, this indicates the employment relationship is between the employment business and the limb (b) worker. In these circumstances, the employment business will be responsible for provision of PPE free of charge. It is likely that in practice the end-user business is in the best position to manage the provision of PPE as they will direct the work and control the premises where it takes place and is responsible for health and safety while the work-seeker is on assignment. Communication and cooperation between the employment business and the end user business will therefore be key to ensure limb (b) workers are provided PPE free of charge.

#### Lack/high variability of compliance by employers

A small number of respondents raised concerns with regards to the possible lack of compliance by businesses. HSE and Local Authorities (via Environmental Health Officers) are the current enforcing authorities for the PPER 1992 in the premises allocated to them by the Health & Safety (Enforcing Authority) Regulations 1998 ("HS(EA)R"). HSE inspectors are responsible for enforcing the PPER 1992 during inspections and make sure employers are complying with the regulations in the premises allocated to them by the HS(EA)R. Where employers are not complying with the law, the relevant enforcing authority for the workplace will be able to take enforcement action requiring compliance.

#### Employment status for tax purposes vs health and safety rights/protections

A couple of respondents indicated that the proposed PPER 1992 amendments may affect individuals in scope of the off-payroll working (IR35)<sup>10</sup> tax rules. There are separate legal frameworks for determining employment status for tax and for rights and the amendment of the PPER 1992 will not have an impact on the current tax rules.

---

<sup>10</sup> [Business tax: Off-payroll working \(IR35\) - detailed information - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/business-tax-off-payroll-working-ir35)



## EU Directive being implemented after the UK has left the EU

The court judgment forms part of retained EU law and it clarified the interpretation of “worker” in an EU Directive which the UK has implemented through the PPER since 1992. Therefore, the Government is making amendments to the PPER 1992 to align with the court’s judgment.

This will provide clarity for workers and employers and continue to uphold the UK’s high standards in relation to health and safety protections. The judgment means that judges interpreting the provisions of the PPER 1992 even in a case between an employer and limb (b) worker, would do so in light of the court’s findings of November 2020. The amendment HSE is making will clarify the law to ensure that these matters are not litigated on a case-by-case basis, which could be costly for businesses.

## **8. Understanding what the amendments to PPER 1992 means for workers, businesses and representatives**

All survey respondents were asked a variation of “Do you understand what this change to the PPER 1992 will mean for you?”



There were 58 responses to this question. 38 responses were from businesses; 6 from workers, 7 from workers’ representatives and 7 from business representatives. Of the 6 worker responses, all of them said ‘yes’. The majority of respondents (83%) said they understand the regulations which indicates these stakeholders will be well prepared to implement any changes required. HSE will provide updated guidance to all its relevant stakeholders to support employers and ensure limb (b) workers are aware of the proposed amendments prior to any legislation being made.

## **9. Possible effects of the proposed PPE amendments**

The following question was asked to all businesses:

‘Will the proposed amendment to give limb (b) workers the same rights to PPE at work as employees affect the way you employ persons in the future?’

48 responses were received; 50% of respondents said ‘No’, 21% said ‘Yes’, and 29% responded ‘Don’t know/Unsure’.



Of all those who responded to the question, 13% said they would employ fewer limb 'b' workers.

Other comments made by business and business representative respondents indicated they might find implementing new processes to comply with the amendments to be complex in practical terms, and may prefer to offer employee contracts only to streamline management processes or contract self-employed persons who provide their own PPE who are out of scope of the PPER 1992. A small number of comments also suggested businesses may prefer to move limb (b) workers to roles that do not require PPE in order to comply with the amendments.

## **10. Conclusion**

The overall response to the consultation was positive, and the findings of the consultation stage impact assessment provided a fair reflection of the potential impacts to business<sup>11</sup>. HSE has considered all the consultation responses that were received, and data gathered will also be fed into a final impact assessment which is being produced alongside the amendments to the PPER 1992. HSE intends to make amendments to the PPER 1992 to ensure limb (b) workers are given the same PPE protections as employees in early 2022.

---

<sup>11</sup> The findings of the consultation do not allow us to triangulate the estimates of the number of limb (b) workers presented in the Consultation Stage Impact Assessment. This is further explored in detail in the final impact assessment.