

Proposed changes to the Personal Protective Equipment at Work Regulations 1992

Further background and the definition of a limb (b) worker

In November 2020, the High Court handed down its judgment in the judicial review between the Independent Workers' Union of Great Britain (IWGB) and the Secretaries of State for the Department for Business, Energy and Industrial Strategy, and the Department for Work and Pensions. HSE was an interested party in that action.

The judgment found that the UK had failed to adequately transpose aspects of two EU Directives into domestic law. Namely, Article 8(4) and 8(5) of [EU Directive 89/391/EEC](#) ("the Health and Safety Framework Directive") and Article 3 of [EU Directive 89/656/EEC](#) ("the PPE Directive"). The UK implementation of these provisions only applied to employees and the court found that the UK's implementation should extend to limb b workers.

The UK implemented the PPE Directive through the [Personal Protective Equipment at Work 1992 Regulations](#). HSE is therefore making amendments to the PPER to ensure the legislation reflects the court's judgment and to extend the scope of the current regulations so that they apply to 'limb (b) workers' as well as 'employees'.

Worker is not currently defined in the PPER, and so the amending regulations will adopt the definition of worker from [s230\(3\) of the Employments Right Act 1996](#) (the ERA 1996) ;

"..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 or any profession or business undertaking carried on by the individual"

This ensures the PPER, as amended, will be consistent with references to workers in employment legislation. In particular, it will be aligned with the ERA 1996 (as above) and with regulations such as the Working Time Regulations 1998 in the definition of worker.

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)

In the ERA 1996, an 'employee' is defined in section 230(3)(1) and comes under the definition of worker under limb (a) of the definition. An employee works under an employment contract and has additional employment rights and responsibilities that do not apply to limb (b) workers.