

Amendments to the Personal Protective Equipment at Work Regulations 1992 (PPER)

Lead department	Health and Safety Executive (HSE)
Summary of proposal	The HSE are amending the current Personal Protective Equipment (PPE) regulations to expand the duty of employers to cover limb (b) workers.
Submission type	Impact assessment (IA) – 18 October 2021
Legislation type	Secondary legislation
Implementation date	Early 2022
Policy stage	Final
RPC reference	RPC-HSE-5124(1)
Opinion type	Formal
Date of issue	29 November 2021

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA states the clear need to amend the regulations, given the judicial decision that they were not sufficient. The HSE have identified the main areas of impact of the policy and have accounted for the changing make-up of the labour market. The IA makes use of primary evidence sourced through surveys, consultation and stakeholder engagement, with the caveats of this evidence clearly communicated. The analysis undertaken is clearly presented and supported by assumptions that have been tested through consultation. The IA could have explored if there were any protected characteristics groups who stood to benefit more from this expanded coverage. The IA includes a commitment to continuous monitoring in addition to a formal post-implementation review (PIR).

Business impact target assessment

	Department assessment	RPC validated
Classification	Non-qualifying regulatory provision	Non-qualifying regulatory provision (EU)

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). The RPC rating is fit for purpose or not fit for purpose.

Equivalent annual net direct cost to business (EANDCB)	£38.1 million	£38.1 million <i>(2019 prices, 2020 pv)</i>
Business impact target (BIT) score	£190.5 million	£190.5 million
Business net present value	£-327.9 million	
Overall net present value	£-19.2 million	

RPC summary

Category	Quality	RPC comments
EANDCB	Green	The IA sets out the main impacts upon business. The HSE have taken in to account the changing number of limb (b) workers in their baseline, from which to estimate costs, as well as gathering evidence to account for those employers who already provide PPE free to limb (b) workers. The key assumptions and evidence used were tested through consultation and stakeholder engagement.
Small and micro business assessment (SaMBA)	Green	The IA sets out the scale of the costs that are expected to fall upon SMBs. This is presented alongside the share of employment and turnover for these businesses to determine that the impact is not disproportionate upon SMBs. Exemption is discussed and explained as not being suitable.
Rationale and options	Satisfactory	The IA clearly sets out why the amending of the regulations is necessary, citing the legal case brought against the current regulations. The HSE explains why a non-regulatory option would be insufficient in addressing the problem.
Cost-benefit analysis	Good	The HSE has drawn upon evidence from three bespoke surveys, their consultation and further stakeholder engagement to inform their analysis and assumptions. The analysis is clearly presented, and the assumptions are given suitable justification with evidence. The HSE has tested key assumptions and estimates through consultation.
Wider impacts	Satisfactory	The IA includes discussion of the unintended impacts, such as changes in employment practices, that may arise. Public sector costs are taken in consideration as part of the main analysis of the IA. While the IA does touch upon the lack of negative impact on those with protected characteristics, the Department should have included whether those in these groups stood to benefit more from the amendments.
Monitoring and evaluation plan	Weak	The HSE commits to undertake both a PIR and to continuously monitor the impact of the policy, utilising their current monitoring systems. The IA has not included any discussion to establish the specific of what will be measured in their monitoring activities, or how this relates to assessing the effectiveness of the measure. In addition, given the degree of uncertainty in the assumptions, the HSE needs to consider testing these in the PIR.

Summary of proposal

In 2020, a judicial review found that, by not including 'workers' in scope of the PPER, the government had not adequately transposed the PPE Directive into UK law. Specifically, it was found that the obligations in relation to PPE, only applied to employers with respect to their contracted employees and not to the full range of their workforce, in particular those classed as limb (b) workers. Limb (b) workers are those who typically:

- carry out casual or irregular work for a 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 (subcontract)
- are not in business for themselves (they do not advertise services directly to customers who can then also book their services directly).

As a result of this ruling, HSE are amending the current PPE regulations, to extend the scope of the regulations, so that the employers' duty is applied towards limb (b) workers as well as their contracted employees. The only options that are being considered in the IA are the do-nothing option and the option to amend the regulations, which would include limb (b) workers in the duty of care for employers to provide PPE.

The main costs to business identified are the initial familiarisation costs for businesses with limb (b) workers, the initial and on-going cost of assessing the suitability of PPE, as well as the provision of PPE to those who currently do not receive it for free. Other costs discussed are those relating to the cleaning of PPE and provision of information to (which the IA provides justification as why these are not monetised), and the cost of enforcement.

The primary benefit identified is the now free provision of PPE to limb (b) workers that previously did not receive it. Additional benefits are discussed but not quantified, such as the time saving to limb (b) workers no longer needing to source PPE for themselves, and the health and safety benefits to those who currently undertake work with the appropriate PPE.

The HSE have provided an EANDCB of £38.1 million for this policy.

EANDCB

Direct and indirect impacts

The IA establishes that all of the costs that have been identified and monetised, are direct impacts to business. The RPC is content with HSEs identification and classification of the relevant impacts and that a proportionate analysis has been undertaken.

Counterfactual/baseline

The HSE has undertaken several rounds of evidence gathering and resulting analysis to establish a baseline estimate for the number of limb (b) workers. The IA takes into consideration the growth in the number of these workers over time, factoring this into the projections used over the 10-year appraisal period.

Furthermore, the HSE have acknowledged that some employers already provide PPE to their limb (b) workers free of charge, seeking to establish the rate at which this occurs so as not to overestimate the impact to business.

SaMBA

Scope

The IA includes a table setting out the expected split of limb (b) workers across businesses of different size, estimating the approximately 40.5% of limb (b) workers in scope of this measure will be from SMBs. Given the approach that HSE has taken to estimating the costs of this amendment, they have assumed then that SMBs will face this percentage of the total costs.

The HSE then relate this to the share of employment and turnover attributable to SMBs in the private sector, noting that they represent 48% and 36% respectively in these areas. As a result of these figures, the HSE state that this amendment does not disproportionately impact SMBs.

Exemption

The IA also includes a clear statement that, an exemption for SMBs would result in a large portion of the benefits not being realised and the policy objective not being achieved.

Rationale and options

The IA clearly establishes the legal case that has been brought against the current regulations, resulting in the requirement to amend the regulations to include limb (b) workers to ensure no further legal action is taken. The HSE further establishes that a non-regulatory option, such as amending the relevant guidance, would not be sufficient in addressing the matter. The IA also establishes that an amendment will ensure HSE inspectors are able to enforce the change through the specific provisions of the regulations.

Cost-benefit analysis

Evidence

The HSE have commissioned three surveys, as well as drawn upon the recent consultation and further stakeholder engagement to inform their analysis. The IA clearly sets out the relevant merits and shortcomings of the evidence gathered through each method. Where appropriate the IA includes questions, and the responses, from the consultation to provide justification for the analysis.

Analysis

The analysis included in the IA is presented and explained clearly. The approach taken is appropriate and the HSE have used the consultation and further engagement to test their approach and assumptions used.

Assumptions, risk and uncertainty

The conclusions reached and assumptions used in the IA are appropriate and supported by the evidence gathered. The HSE clearly discuss the caveats associated with the evidence that they have gathered and has shown a clear desire to explore all potential avenues to source robust evidence. The IA could have benefited from the inclusion of sensitivity analysis, which explored the impact of some key assumptions (such as the number of limb (b) workers) on the overall cost of the amendments.

Wider impacts

Environment

The IA touches upon the possibility of an increase in disposable PPE, however it is stated that it was not proportionate to explore this in greater detail, citing a low level of stakeholder responses on the issue. The IA should have discussed this in more detail.

Distributional

The IA has included consideration of whether the amendments to the regulations will lead to any negative impacts for those with protected characteristics, determining after consultation, that there would not be such a negative impact. The HSE should have also considered whether any protected characteristic groups stood to benefit from the proposed changes. For example, considering if limb (b) workers were more likely to come from any of the protected groups than the wider working population.

Public sector

The IA includes costs to the public sector within its main cost and benefit calculations, although citing that the size of the impact here will only be a small component of the overall impact of the amendment.

Other

The HSE have also included discussion of the potential unintended effects of this amendment to the regulations. In this they highlight that through the consultation and wider evidence gathering process. It was identified that due to the practical complexity of implementing changes to comply with the amendments, employers may choose to offer employee contracts. While it was also identified that employers may prefer to move limb (b) workers to roles where there would not be a requirement to supply PPE.

Monitoring and evaluation plan

The HSE commit to undertaking a formal PIR of this amendment to the regulations, as well as committing to continually monitor the impact from implementation onwards. HSE's current record keeping system and database will be used to assess the impact of the changes. The number of enforcement actions and the number of concerns raised (by workers who believe their employer to be non-compliant) have proposed as metrics to track progress.

However, the IA has not included any discussion to establish what will be measured in their monitoring activities, or how this relates to assessing the effectiveness of the amendment. Due to the great degree of uncertainty across a number of the assumptions used in the analysis, the IA is missing the inclusion of a commitment to use the PIR to further test these key assumptions and ultimately costs of the amendments.

Regulatory Policy Committee

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