EXPLANATORY MEMORANDUM TO

THE PERSONAL PROTECTIVE EQUIPMENT AT WORK (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2024

S.R. 2024 No. 161

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above), which is laid before the Northern Ireland Assembly.

1.2. The Rule is made in exercise of the powers conferred by Articles 2(4) and (5), 17(1), (2), (3)(b) of, and paragraphs 10 and 13 of Schedule 3 to the Health and Safety at Work (Northern Ireland) Order 1978 and is subject to the negative resolution procedure.

1.3. The Rule comes into operation on 21st October 2024.

2. Purpose

2.1 The Rule amends the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993[1] ("the PPER 1993") 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 rule will also update references to other legislation contained in the PPER 1993.

3. Background

3.1 Currently health and safety legislation here does not have a definition of worker. Worker is defined in Article 3(3) of the Employment Rights (Northern Ireland) Order 1996[2]. The definition has two limbs, limb (a) and limb (b). Those captured by limb (a) are employees under the Health and Safety at Work (Northern Ireland) Order 1978[3] ("the 1978 Order") and are already in scope of the PPER 1993. 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 1993. This rule creates its own definition of worker intended to capture both of these groups.

3.2 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 Party[4]. The High Court found that the UK had failed to fully implement two EU Directives, the Health and Safety Framework Directive[5] (89/391/EEC) and the Personal Protective Equipment Directive[6] (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.

---

[1] https://www.legislation.gov.uk/nisr/1993/20/contents/made
[2] https://www.legislation.gov.uk/nisi/1996/1919/contents
[3] https://www.legislation.gov.uk/nisi/1978/1039/contents
[4] https://www.bailii.org/ew/cases/EWHC/Admin/2020/3050.html
[5] https://osha.europa.eu/en/legislation/directives/the-osh-framework-directive/1
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31989L0656

3.3 The changes made by this Rule are in response to the judgment. This rule amends PPER 1993 to extend the employers' and employee's duties in respect of personal protective equipment ("PPE") to limb (b) workers. The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety cases) (Amendment) Order (Northern Ireland) 2021[7] came into operation on 31st May 2021 in order to address the court judgment in relation to the Health and Safety Framework Directive (89/391/EEC).

3.4 Currently PPE is defined in the PPER 1993 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 him against one or more risks to his health or safety, and any addition or accessory designed to meet that objective*".

3.5 The PPER 1993 as currently drafted does not align with the High Court judgment. This Rule will extend the PPER 1993 to limb (b) workers and will provide additional clarity to businesses and workers in respect of PPE provision and duties.

3.6 The duties under the PPER 1993 apply whilst an employee is at work. Article 2 of the 1978 Order[8] provides the meaning for "work" and related expressions. This Rule modifies the application of Article 2 to the PPER 1993 to extend the meaning of work to capture all workers, as defined in this Rule.

3.7 Article 10 of the 1978 Order[9] 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 1993 as it is a relevant statutory provision. This rule modifies the application of Article 10 to the PPER 1993 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.

3.8 This rule does not provide for any additional duties in the PPER 1993. The following existing obligations and requirements on employers and employees under the PPER 1993 will be extended to limb (b) workers:

Regulation 4 requires an employer or self-employed person to provide suitable PPE to an employee where risks to the employee's health and safety cannot be controlled by other means.

Regulation 5 requires an employer or self-employed person to ensure that where more than one item of PPE is worn simultaneously by an employee, they are compatible with each other.

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

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

Regulation 8 requires an employer or self-employed person to ensure appropriate accommodation is provided for the when it is not being used.

---

[7] https://www.legislation.gov.uk//nisr/2021/103/contents/made
[8] https://www.legislation.gov.uk/nisi/1978/1039/article/2
[9] https://www.legislation.gov.uk/nisi/1978/1039/article/10

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. Every self-employed person shall make full and proper use of any PPE provided to them.

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

3.9 This Rule also updates references to other legislation contained in the PPER 1993 which are out of date; the Control of Lead at Work Regulations (Northern Ireland) 1986 (S.R. 1986 No. 36); and the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 (S.R. 2003 No. 34).

4. Consultation

4.1 The Health and Safety Executive for Northern Ireland ("HSENI") ran a Public Consultation exercise from 09 November 2022 to 13 January 2023. Letters were issued to 430 consultees, including individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in equality and related issues (including each member of the Northern Ireland Assembly). The consultation document was posted on the HSENI website[10].

4.2 During the consultation period 3 formal replies were received.

4.3 A summary of the outcome of the consultation exercise can be found on the HSENI website[11].

5. Equality Impact

5.1. The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or, with the exception of age, differential impacts were identified. As the proposals relate primarily to workplaces they will have a justified differential impact on those of a working age. There is no evidence to suggest that the proposals will impact disproportionately on any other Section 75 group.

6. Regulatory Impact

6.1 HSENI is of the opinion that the analysis and considerations as set out in the Great Britain Impact Assessment can be applied to Northern Ireland on a proportionate basis.

7. Financial Implications

7.1 The Rule has no cost implications for the Department for the Economy.

8. Section 24 of the NI Act 1998

[10] Proposals for Amendments to the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993 | Health and Safety Executive Northern Ireland (hseni.gov.uk)

[11] HSENI proposals for amendments to the Personal Protective Equipment at Work Regulations (NI) 1993 - Summary of Consultation responses and HSENI Comments | Health and Safety Executive Northern Ireland

8.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

9. EU Implications

9.1 This Rule will adequately transpose aspects of two EU Directives into domestic law. Namely, Article 8(4) and 8(5) of EU Directive 89/391/EEC and Article 3 of EU Directive 89/656/EEC.

10. Parity or Replicatory Measure

10.1 In Great Britain, the Personal Protective Equipment at Work (Amendment) Regulations 2022 (S.I. 2022/8)[12] were made on 5th January 2022, laid before Parliament on 10th January 2022 and came into force on 6th April 2022.

Department for the Economy

September 2024

[12] https://www.legislation.gov.uk/uksi/2022/8/contents/made