

# Tolley's Health and Safety at Work

## Personal Protective Equipment

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### INTRODUCTION TO PERSONAL PROTECTIVE EQUIPMENT

#### [P3001]

Conventional wisdom suggests that 'safe place strategies' are more effective in combating health and safety risks than 'safe person strategies'. Prevention/control measures serve to protect everyone at work, whilst the advantages of personal protective equipment (PPE) are limited to the individual(s) concerned and their ability or cooperation in using it correctly. Given, however, the fallibility of any state of the art technology in endeavouring to achieve total protection, some level of PPE is inevitable in view of the obvious (and not so obvious) risks to head, face, neck, eyes, ears, lungs, skin, arms, hands and feet. Use of PPE must always be seen as a last resort when identifying and selecting equipment for protection of workers, or used as an additional control measure along with more robust technology which prevents or reduces a worker's exposure to risk. Use of PPE, however, is often used by employers as the first control measure they put into place, either as a temporary measure whilst more robust forms of protection are arranged or because it is the quickest and easiest protection method to arrange. However, legislation requires more than this quick-fix approach.

Current statutory requirements for employers to provide and maintain suitable PPE are contained in the *Personal Protective Equipment at Work Regulations 1992* (SI 1992 No 2966) as amended by the *Health and Safety (Miscellaneous Amendments) Regulations 2002* (SI 2002 No 2174). This legislation requires the employer to carry out an assessment to determine what PPE is needed and to consider employee needs in the selection process. The 1992 regulations were further amended on 6 April 2022 with the *Personal Protective Equipment at Work (Amendment) Regulations 2022* (PPER 2022). The main duties of the 1992 regulations remain unchanged but introduce duties and requirements for two categories of worker: limb a and limb b workers. (See further P3007.1 below.)

Adjunct to this, common law insists, not only that employers have requisite safety equipment at hand, or available in an accessible place, but also that management ensure that operators use it (see *Bux v Slough Metals Ltd* [1974] 1 All ER 262). That the hallowed duty to 'provide and maintain' has been getting progressively stricter is evidenced by *Crouch v British Rail Engineering Ltd* [1988] IRLR 404 to the extent that employers could be in breach of either statutory or common law duty (or both) in the case of injury/disease to a member of the employee's immediate family involved, say, in cleaning protective clothing; however, the injury/disease must have been foreseeable (*Hewett v Alf Brown's Transport Ltd* [1992] ICR 530).

This section deals with the requirements of the *Personal Protective Equipment at Work Regulations 1992*, the *Personal Protective Equipment (EC Directive) Regulations 1992* (SI 1992 No 3139) which were consolidated by SI 2002 No 1144 and the *Personal Protective Equipment at Work (Amendment) Regulations 2022* (SI 2002 No 8) (PPER 2022). The *Personal Protective Equipment (EC Directive) Regulations 1992* (SI 1992 No 3139), consolidated by SI 2002 No 1144 have been revoked but continue to apply to PPE placed on the market before 21 April 2019. If, before 21 April 2019, either an EC-type examination certificate is issued by an approved body under SI 2002 No 1144 or an approval decision is made under Schedule 8 to SI 2002 No 1144, then that certificate or decision will remain valid until 21 April 2023 or until its expiry date, whichever is the earliest. The Regulations cover the duties imposed on manufacturers and suppliers of PPE, the common law duty on employers to provide suitable PPE, the main types of PPE and clothing and some relevant British Standards.

# THE PERSONAL PROTECTIVE EQUIPMENT AT WORK REGULATIONS 1992

## [P3002]

The *Personal Protective Equipment at Work Regulations 1992*, require all employers to ensure that employees have PPE where employees may be exposed to a risk to their health or safety while at work except where and to the extent that such risk has been adequately controlled by other means which are equally or more effective. Self-employed workers are required to follow this requirement. The equipment provided is not deemed to be suitable under this regulation unless:

- (a) it is appropriate for the risk or risks involved and the conditions at the place where exposure to the risk may occur;
- (b) it takes account of ergonomic requirements and the state of health of the person or persons who may wear it;
- (c) it is capable of fitting the wearer correctly, if necessary, after adjustments within the range for which it is designed;
- (d) so far as is practicable, it is effective to prevent or adequately control the risk or risks involved without increasing overall risk;
- (e) it complies with any enactment (whether in an Act or instrument) which implements in Great Britain any provision on design or manufacture with respect to health or safety in any relevant community directive listed in Schedule 1 which is applicable to that item of PPE.

To meet this requirement, employers must make a formal assessment of the PPE needs of employees and provide ergonomically suitable equipment in relation to foreseeable risks at work (see further P3006 below).

Employers cannot be expected to comply with these statutory duties, unless manufacturers of PPE have complied with theirs under the requirements of the *Personal Protective Equipment (EC Directive) Regulations 1992* (SI 1992 No 3139) and SI 1994 No 2326 (now revoked and consolidated by SI 2002 No 1144) – that is, had their products independently certified for EU accreditation purposes. Although imposing a considerable remit on manufacturers, EU accreditation is an indispensable condition precedent to sale and commercial circulation (see P3012 below). Note that CE marking will no longer apply for products manufactured in the UK from 2023 following the UK's exit from the European Union, and instead will require UKCA marking. Where products are exported to the EU, they will still require CE marking so it is likely that PPE is likely to require both CE and UKCA marking.

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