



Legal hot topics

Issue 1 February 2022

Bunmi Adefuye, Legal Advice Manager, REC answers some significant questions asked on the legal helpline and highlights some legislative changes this year.

What are the changes to PPE Regulations?

Last summer, Government hosted a consultation on the Personal Protective Equipment at Work Regulations 1992 (PPER), to understand the impact of extending the employers' duties under the PPER to bring workers in scope. Government decided to review the PPER because the Independent Workers' Union GB brought a judicial review at the High Court on the basis that the UK had not correctly implemented EU health and safety law, by limiting protection from detriment on health and safety grounds to only employees. They argued that the protection must extend to workers to reduce the exposure to Covid-related health and safety risks and the High Court agreed.

From 6 April 2022, in England, Scotland and Wales, all employers (which will include employment businesses) must ensure that suitable personal protective equipment (PPE) is provided to workers who may be exposed to a risk to their health and safety while at work.

The definition of worker is set out in the ERA 1996 S.230 as *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.*



PPER:
Personal Protective
Equipment at Work
Regulations 1992

As a reminder, 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.”*

The employer’s duties include the assessment and **FREE** provision of PPE. Employers must ensure that PPE is suitable for use, it is maintained, replaced and there are other duties around the information, instruction, training, and use of PPE. The employees’ and workers’ duties under the PPER will include reporting loss and defects in the PPE, using it in accordance with the training and instruction provided, and ensuring PPE is returned to the employer.

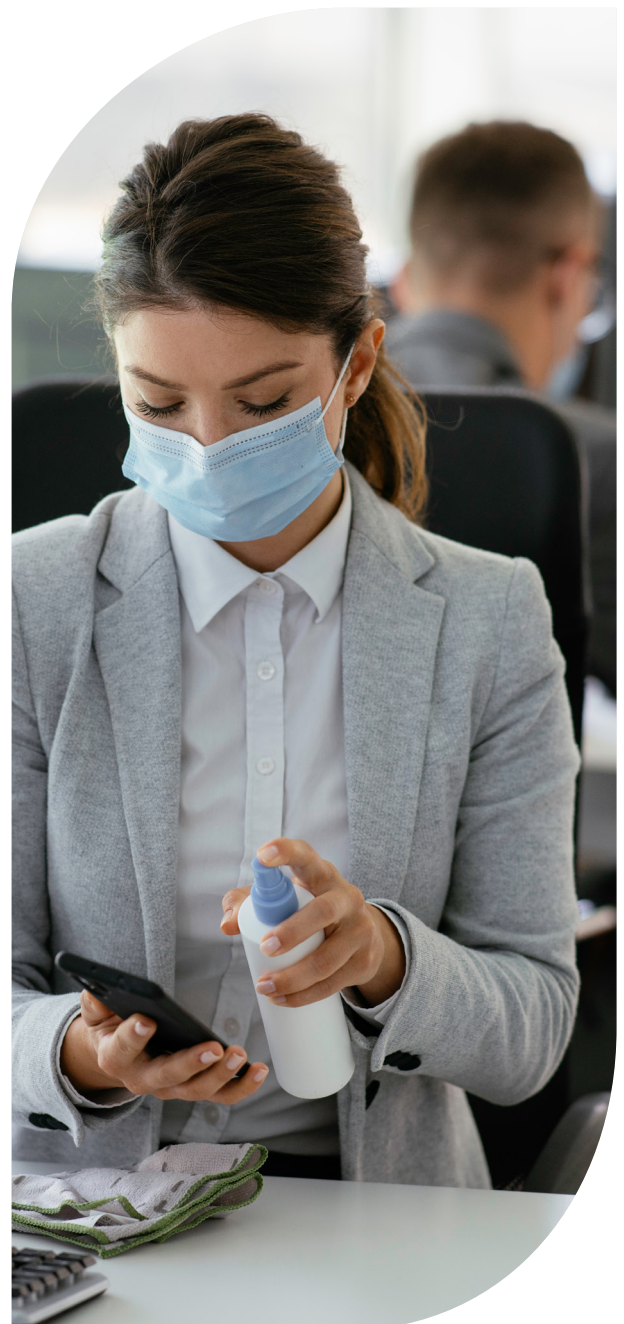
This requirement is onerous for employment businesses, as you have no control over how the workers provide their services, therefore communication and co-operation with the client will be key to meet this obligation. To protect our members, we have suitable clauses in our model terms with clients, which state that:

“The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.....”

There is also a clause which requires the hirer to comply with the Health and Safety at Work etc Act 1974 when the workers are on an assignment.

These clauses will assist with discussions with the client where the employment business can increase their charges to meet a statutory obligation and ensure that correct PPE is provided to the workers.

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National Insurance contributions will increase by 1.25 percentage points



National Insurance Contributions Increase

The Government has set out that from 6 April 2022 to 5 April 2023, National Insurance contributions will increase by 1.25 percentage points. The increase will be spent on helping the NHS, and social care in the UK, to get back to a position it was in before the pandemic.

The increase will apply to:

- Class 1 (paid by employees)
- Class 4 (paid by self-employed)
- Secondary Class 1, 1A and 1B (paid by employers)

The current rate for employees is 12%. Therefore, from April 2022 to April 2023 NICs for employees will be 13.25%. The current rate for employers is 13.8%. Therefore, from April 2022 to April 2023 employers NICs will be 15.05%.

In terms of how these costs will be met, if you are using REC terms, such as 'Contract 3 - Terms of business with a hirer for the supply of agency workers', there are provisions in the contract which state that "you reserve the right to vary the charges agreed with your client, by giving them written notice, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement...". If the client refuses, the cost should not be deducted from the worker's pay, as it is unlawful to pass on employer's NICs to the worker and it would be an unlawful deduction of wages.

There is a more detailed guide about NICs on the [Government website](#).



Digital Right to Work

What is the new digital system?

On 27 December 2021, HO announced that employers can use certified Identity Service Providers (IDSPs) to conduct digital identity checks from 6 April 2022. This is a new service, and the cost of these services would be met by employers. The costs of the technology vary from as little as £1.45 per check, to between £50 - £70 per check, depending upon the levels of service supplied by the provider. However, the issue is that for EU nationals, the Employer's Checking Service (ECS) is free and the ECS is not available to British and Irish nationals. REC's Campaigns team will be vocal about the concern over costs and continue to push HO for an in-house free system like the ECS.

The technology will allow candidates to upload images of their personal documents, to an Identification Document Validation Technology (IDVT) provider instead of presenting physical documents to a prospective employer, which reduces time and mitigates risk. It will help to support long-term post pandemic working practices, accelerate the recruitment and onboarding process, improve employee mobility, and enhance the security and integrity of the checks. In addition, the IDVT will remove human error in terms of identifying fraudulent documents or inaccuracies.

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How can an organisation become a certified provider under the system?

Any business can apply to become certified. Government has set out a step-by-step process on how providers become certified:

- 1. Providers who wish to become certified must firstly decide whether they want to be certified against a) the Right to Work and Right to Rent Schemes only, b) the DBS Scheme only, or c) both.*
- 2. Providers must engage with one of the selected certification bodies (see below) and agree a contractual relationship for completing the assessment process.*
- 3. Providers are assessed by a combination of desk reviews and on-site audits depending on the scope to be assessed. Although having taken part in the alpha testing of trust framework is not a requirement, those who did participate will be able to use their alpha self-assessments as supporting evidence as part of this process.*
- 4. After the audits have taken place, certification bodies will advise DCMS and the provider undergoing certification of their recommendation in regard to certification.*
- 5. DCMS will review the outcome of the assessment process and, if all requirements have been met, the provider's name, contact details, and information regarding their certification will be published on this webpage. Employers, landlords and other relevant providers interested in procuring digital identity services will be able to see which providers have been approved.*
- 6. Certification is a time-limited process and providers will need to undertake an annual surveillance audit and biennial recertification to remain on the list of certified providers for these Schemes.*



The actual process for using the IDVT has not yet been published. However, we will advise our members when we have more details.

For more specific details from government please use the following links:

[Identity document validation technology in the right to work and right to rent schemes](#)

[DBS pre-employment checking](#)

[Digital identity certification for right to work, right to rent and criminal record checks](#)

Finally, from 6 April 2022, Employers will have **three** options in carrying out Right to Work checks:

- Manual process where original documents are provided,
- the Employers Checking Service, or
- IDVT process.

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