

# Compulsory Covid-19 Vaccinations in Health and Social Care Settings

Practical steps health & social care employers can take now to prepare for compulsory Covid-19 vaccinations.

19 November 2021

Following various media announcements last week about imminent proposals, the government has now announced its decision to move ahead with compulsory COVID-19 vaccinations for certain health and social care staff working in England. Steps will not be introduced until 1 April 2022, following concerns that a more immediate push for compulsory vaccinations might place too much pressure on health and social care provision and a potential staff exodus during the always challenging winter months.

## Background

A previous consultation ran between 9 September and 22 October 2021, considering whether to extend the statutory requirement for those working or volunteering in care homes to be vaccinated against COVID-19 to other health and care settings. Although 89% of frontline NHS staff in England are reportedly fully vaccinated, between 80,000 and 100,000 NHS workers in England remain unvaccinated.

The consultation also considered whether there should be a statutory requirement to be vaccinated against the flu but this is not being taken forward at this stage.

The government's response to the consultation can be found [here](#).

## Who will be covered?

The government's proposed approach to put the requirements on a statutory footing is through an amendment to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Providers of CQC regulated activities will only be allowed to deploy individuals who have been fully vaccinated against COVID-19 (or who are exempt) to roles where they interact with patients or service users. This is wider than "frontline" staff as it will include other non-clinical workers who have face to face contact with patients – such as receptionists, ward clerks, porters and cleaners.

The proposed Regulations will apply in health and social care settings including hospitals, GP practices and where care is delivered in a person's home. They will apply to CQC-regulated activities whether they are publicly or privately funded. They will also apply where the regulated activity is delivered through agency staff, volunteers or trainees, or contracted to another provider.

This is a different approach to that taken in respect of care homes where the obligation applying from 11 November 2021 relates to those entering the premises of CQC regulated care homes and is not simply limited to those persons undertaking direct treatment or personal care as part of the carrying on of a CQC regulated activity.

It will be the responsibility of the CQC registered person to check evidence of vaccination status provided by workers. It may be that vaccination status can be demonstrated through the use of the NHS App but this is still to be explored.

## Exemptions

Medical exemptions will apply in a similar way to those applying within care homes - this should be determined by reference to the [COVID-19: the green book, chapter 14a](#). This contains very few medical exemptions – largely related to those who have had an allergic reaction to a previous dose of the vaccine, or any of the vaccine components. There may also be timing issues for when a vaccine should be taken by some individuals with other medical conditions.

Although the consultation did not propose any exemption for those who are pregnant, a temporary exemption has been allowed (should pregnant women wish to rely on it) within care homes. The response may indicate that a similar approach will be taken within wider health and social care settings, although further guidance will be provided in due course.

Those who do not have direct, face to face contact with a service user, for example, those providing care remotely, such as through triage or telephone consultations or managerial staff working in sites apart from patient areas will be exempt.

Those providing care as part of a shared lives agreement will also be exempt.

Currently, those working in care homes under the age of 18 are exempt from the requirements for compulsory vaccination. Questions were asked as part of the wider consultation as to whether those aged 16 and 17 providing direct treatment or personal care as part of the carrying on of a CQC regulated activity should be required to be vaccinated. However, the government response has confirmed a continuing exemption for those under 18 years of age.

There are no proposed exemptions for those who object to vaccinations on the grounds of religion or belief; the government has rejected this, concluding that to do so would cause difficulties in implementation and undermine what the proposal is trying to achieve.

The response indicates that work is still being done on a “simple process” to allow people to prove an exemption – this is likely to include both a web-based solution for those who do not have access to the NHS App, and a non-digital solution (a letter).

## Information and Encouragement

Compulsory vaccination is an emotive topic in an already difficult and pressured environment. The pandemic has shown clear disagreements between those who feel that society should take steps to protect its most vulnerable, and those who believe that personal freedoms are paramount.

The government’s proposals do not have universal support – prior to the government consultation, the [Academy of Medical Royal Colleges set out its views](#) confirming that, whilst it believes that health and care staff should choose to be vaccinated, compulsory vaccinations were neither “sensible nor necessary”. The British Medical Association has also issued a press release stating that “legal, ethical and practical implications must be considered ahead of mandating vaccinations”, calling for an impact assessment. The response indicates that a full impact assessment will be published as soon as possible.

Whilst the delay in implementation may allow some time to cover the difficult winter months, employers may wish to use this time to try to encourage vaccination from any remaining reluctant staff, to avoid significant resourcing challenges in the spring. Understanding the reasons why some staff have so far chosen to remain unvaccinated may allow any misconceptions or misunderstandings to be resolved. Even if staff continue to have concerns, gaining a clear understanding of the impact these proposals will have on staffing and resourcing will give the best chance of avoiding service disruption in April.

## Practical Steps to Consider

- Collate the available data to allow the employer to understand how many staff in patient facing roles are not vaccinated and whether there are groups of staff where the rate of vaccine hesitancy is high and targeted engagement may be needed.
- Hold discussions with recognised unions with a view to working in partnership to engage with their members about vaccination concerns.
- Provide guidance to managers about having conversations with their staff about their vaccine hesitancy.
- Consider the wider communication strategy and what briefings will be disseminated to staff about the need to be vaccinated, how the information will be disseminated and when.
- Consider involvement of experts on the vaccines, peers/colleagues from same ethnic background or same peer group (e.g. expectant mothers) to get the message out to employees about their own experiences with the vaccine and why it is safe.

- Instruct managers to start conversations with employees early to provide lots of opportunity for ongoing discussion and for consideration of redeployment if required.
- Refer employees to OH if appropriate to consider medical exemption and/or reason for hesitancy.
- Consider setting up group discussions led by clinicians/community leaders/other relevant speakers aimed at addressing concerns/fears of staff alongside individual line manager discussion.
- If it becomes clear that certain employees will not agree to be vaccinated, start consultation about redeployment – temporary or permanent.
- Consider introducing a Vaccination Policy to make the Trust's approach and process clear to employees.
- Review recruitment processes for new starters to ensure employment contracts and offer letters appropriately deal with vaccination requirements and status.

Although the proposals currently relate to two doses of the vaccination, employers will need to ensure that they remain up to date with any changes to the legal requirements - such as whether requirements extend to annual or booster vaccinations, and/or to vaccines for other medical conditions such as flu.

## Potential Risk Areas

As set out above, the current proposed exemptions to the requirement for compulsory COVID-19 vaccinations do not extend to objections on the grounds of religion or belief. Employers may therefore find themselves on the receiving end of grievances (or claims of discrimination) from affected employees. Whilst ultimately an employer is highly likely to have objective justification for requiring vaccinations for those staff falling within the scope of the proposed Regulations (and who cannot be redeployed), dealing with internal complaints or claims will impact both on management time, and employee relations. An early provision of factual information about the benefits of vaccination may also help to reduce the number of complaints which are not based on religious grounds but rather due to an employee's fears about vaccination.

The NHS will be in a different position than care homes because there will be jobs that those who do not want to have the vaccine can do. NHS employers may therefore face complaints and possibly claims relating to selection for redeployment opportunities. NHS employers will need to consider whether employees who refuse to be vaccinated should be given the same priority consideration for redeployment as those employees who are on the redeployment register for other reasons. A system based approach to redeployment, considering whether staff can be redeployed or shared with other organisations stands the best chance of retaining valuable NHS employees. In any event, a fair and proportionate selection and redeployment process will be essential.

Employers may also face unfair dismissal claims from those who resign as a result, or who are ultimately dismissed. The proposed Regulations are highly likely to give employers a potentially fair reason for dismissal (statutory restriction and/or some other substantial reason), albeit that consideration would have to be given to potential redeployment to non-patient facing roles, if available, together with a fair procedure followed. It may also be necessary to consider some wider workforce adjustments if there are some non-clinical roles which are patient-facing, but which do not necessarily need to be.

Should you wish to discuss the implications of the government's proposal on your workforce, please feel free to contact Jacqui Atkinson, our Head of Employment Healthcare and our Employment Health Partners Helen Badger and Bridget Prosser.

## Contact

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