



Department  
of Health &  
Social Care

# **Coronavirus (COVID-19) vaccination of people working or deployed in care homes: operational guidance**

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# 1. Executive summary

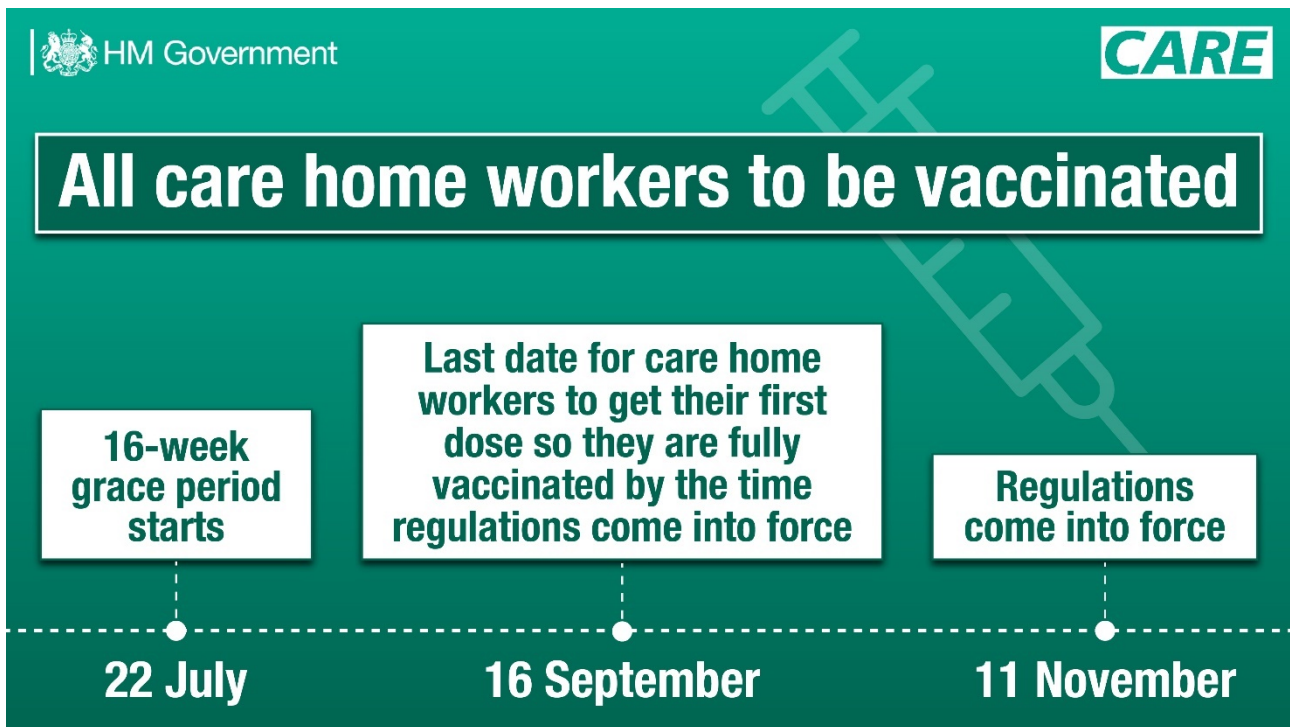
Throughout the COVID-19 pandemic, care home workers have done a phenomenal job to support and protect those most at risk from COVID-19. People across the sector have risen to this unprecedented challenge and gone above and beyond the call of duty to keep those they care for safe.

We value the incredible work that people in care homes have done over the last 18 months to care for some of the people who are most at risk from COVID-19. We want to ensure that care homes are as safe as possible for the staff working in them and the people they care for. We believe that the best way to do this is to ensure that everyone who can take up the offer of vaccination, does.

Vaccination offers the best protection against the virus both for staff and care home residents. From 11th November 2021, all care home workers, and anyone entering a care home, will need to be fully vaccinated, unless they are exempt under the regulations.

Vaccinations can be booked online through the [National Booking Service](#) or by ringing 119. It is also possible to visit one of hundreds of walk-in centres across the country without the need to book in advance. Find your nearest centre at [nhs.uk/grab-a-jab](https://nhs.uk/grab-a-jab).

## Timeline for implementation <sup>1</sup>



Key dates to bear in mind are: 22 July (this is when the grace period starts), 16 September (last date for care home workers to get their first dose so they are fully vaccinated by the time the regulations come into force) and 11 November (regulations come into force).

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<sup>1</sup> These dates are true as of the date of publication

## 2. How to use the guidance

### The purpose of this guidance

This guidance applies to regulated activity in a care home – that is the provision of accommodation together with nursing or personal care. It has been produced to help support the implementation of the [Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) Regulations 2021 \('the Regulations'\)](#). These regulations require registered persons of all CQC registered care homes (which provide accommodation together with nursing or personal care) to ensure that a person does not enter the indoor premises unless they have been vaccinated. This is subject to certain exemptions.

The regulations were laid in Parliament on 22 June 2021 and were made on 22 July 2021.

### Who this guidance is aimed at

The guidance is aimed at service providers, registered persons, local authorities, workers (including agency staff) and residents of CQC-regulated care homes which provide accommodation for persons who require nursing and personal care.

This guidance also applies to all professionals and tradespeople who enter these settings.

### How to use this guidance

The guidance is split into chapters. Some chapters are dedicated to guidance which is relevant for all groups, such as the detail on exemptions or how to provide evidence. Some chapters provide extra information specific to certain groups, for example for residents. Use the contents page at the start of the document to find the information which is relevant to you.

### How this guidance will be updated

We will update this guidance when there are useful links to be added and if there are any changes to the regulations.

## 3. Introduction

### The vaccine rollout

The rollout of the COVID-19 vaccination to care homes has been phenomenal, thanks to effective leadership and collaboration across the social care sector and the NHS, in partnership with local authorities, as well as the dedication of care home managers in supporting and encouraging staff. More than 1.26 million social care workers in England are now fully vaccinated - an important step to protect themselves, their loved ones, and the people they care for, from becoming seriously ill or dying from COVID-19.

### Why is it important to have a vaccine

Over the last year and a half, COVID-19 has sadly taken many thousands of lives, in particular, among older people, those with underlying health conditions and those who need the level of care provided in care homes.

The Scientific Advisory Group for Emergencies (SAGE) Social Care Working Group has highlighted that people living in care homes have been particularly impacted by the COVID-19 pandemic, due to a combination of a heightened risk of severe outcomes following COVID-19 infection and the risk of outbreaks in closed settings.

Since January 2021, care homes have tested staff over 21 million times and used 1.2 billion items of PPE. Yet, despite this protection and the best efforts of committed staff, we have seen outbreaks in all towns across all regions and nearly 14,000 care home residents have died of COVID-19 since the beginning of this year<sup>2</sup>.

There is one thing now which is making a crucial difference, and which is saving the lives of care home residents and staff: vaccination.

Vaccinated people are better protected from severe illness and death as a result of COVID-19. [Analysis carried out by Public Health England \(PHE\)](#) on the direct and indirect impact of the vaccination programme on infections and mortality, suggests the vaccination programme, as of 15<sup>th</sup> July 2021, has prevented between 11 and 12.5 million infections and between 35,200 and 38,600 deaths since the start of the vaccination programme.

There is evidence to suggest that the COVID-19 vaccine also prevents those who catch the virus from infecting other people. Research by PHE shows that those who do become

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<sup>2</sup> [Number of deaths in care homes notified to the Care Quality Commission, England - Office for National Statistics \(ons.gov.uk\)](#)



infected 3 weeks after receiving one dose of the Pfizer-BioNTech or AstraZeneca vaccine were between 38% and 49% less likely to pass the virus on to their household contacts than those who were unvaccinated.

Even as the UK officially lifts most COVID-19 legal restrictions, the virus will remain in some shape or form and we will have to learn to live with it. It will continue to circulate, potentially evolving into new variants.

Although we have seen strong take-up of vaccination amongst care home residents, there are some who cannot be vaccinated and some for whom vaccination is less effective. Some residents will therefore continue to be at greater risk of the consequences of COVID-19. This winter, a potential combination of COVID-19 and flu would be life threatening for care home residents, who may be at high risk due to their age, underlying health conditions, or a disability.

Vaccination against COVID-19 is the best way that workers can keep themselves and those they care for safe from the effects of the virus. Sustaining high levels of staff vaccination now, and in the future, as people enter the workforce, is important to minimise the risk of outbreaks in care homes, which continue to be high-risk settings.

## **Where to find information about the COVID-19 vaccines**

As we move towards these new regulations coming into force, it is very important that we maintain our efforts to support and encourage care home staff to take the vaccine. We know that conversations with trusted peers or medical professionals can make a real difference. There are a range of published resources with information about the vaccine that can be used to support those difficult conversations, all of which are available in 19 different languages:

- [COVID-19 vaccination: guide for adults - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/covid-19-vaccination-guide-for-adults)
- [COVID-19 vaccination: what to expect after vaccination - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/covid-19-vaccination-what-to-expect-after-vaccination)
- [COVID-19 vaccination and blood clotting - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/covid-19-vaccination-and-blood-clotting)
- [COVID-19 vaccination: women of childbearing age, currently pregnant or breastfeeding - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/covid-19-vaccination-women-of-childbearing-age-currently-pregnant-or-breastfeeding)
- [COVID-19 vaccination: easy-read leaflets - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/covid-19-vaccination-easy-read-leaflets)
- [NHS England and NHS Improvement London » COVID-19 vaccine communication materials](https://www.nhs.uk/england-and-nhs-improvement-london/covid-19-vaccine-communication-materials) (videos in different languages)

The Department of Health and Social Care has produced a toolkit of resources that is tailored for the adult social care sector. This is available online at Public Health England's Campaign Resource Centre: [Vaccine Communications Toolkit for Adult Social Care](#).

The toolkit is regularly updated and includes:

- a Stakeholder Q&A on the COVID-19 vaccines
- guidance and resources addressing common concerns about the vaccines, such as fertility, ingredients, allergies and speed of delivery
- advice on how to reassure people about taking the vaccine
- video clips of clinical experts discussing the vaccines
- video clips and case studies of social care workers sharing their own vaccination stories

Support is also available through the Community Champions programme which has allocated £23.7 million of funding to 60 councils and voluntary groups across England. Follow this link for the [full list of participating local authorities](#). Community champions work directly with communities disproportionately impacted by COVID-19 to boost confidence in the vaccine. Alongside the NHS and public health teams, they work to answer questions and support informed decisions about the vaccine, to remove barriers to access.

More information on the programme of work underway to drive vaccine uptake, including actions to improve access and to address the concerns of those who may be hesitant to receive the vaccine, is set out in the [UK COVID-19 vaccination uptake plan](#) (published 13 February 2021).

## 4. The policy

### Summary of the regulations

The regulations require that all CQC-registered service providers (or registered managers) of accommodation for those who require nursing or personal care in a care home must ensure that a person does not enter the care home unless:

- the person resides in the care home used by the registered person<sup>3</sup> (a resident)
- the person has provided the registered person, (or those acting on behalf of the registered person) with satisfactory evidence that:
  - they have been vaccinated with the complete course of an authorised vaccine (the individual can prove they are fully vaccinated)
  - they, for clinical reasons, should not be vaccinated (the individual is exempt for medical reasons); (further detail below)
- it is reasonably necessary for the person to provide emergency assistance in the care home (further detail below)
- it is reasonably necessary for the person to provide urgent maintenance assistance to the care home (further detail below)
- the person is a member of the emergency services in execution of their duties (further detail below)
- that a person is a friend or relative of the resident visiting the resident (further detail below - this also includes unpaid carers or designated essential care givers)
- the person is visiting a resident who is dying (further detail below)
- it is reasonably necessary for the person to provide comfort or support to a resident in relation to a resident's bereavement following the death of a relative or friend (further detail below) or
- the person is under the age of 18 (further detail below)

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<sup>3</sup> a person registered with the CQC as a manager or service provider in respect of a regulated activity, in this case, the regulated activity for the provision of accommodation for persons requiring nursing or personal care.

The vaccination requirement only applies to people who go inside a care setting (the definition of 'care home' does not include any surrounding grounds). As long as someone is not entering the building, they would not need to show vaccination status.

## **Registered persons**

The registered person is responsible for ensuring that everyone who enters their care home is either vaccinated or exempt.

The registered person will be the person registered with the CQC as a manager or service provider.

Registered persons may make arrangements for another person to carry out certain tasks to help comply with the regulations. While this is acceptable, the registered person is the one who remains legally responsible for compliance with the regulations.

For more information on what this requirement means for registered person, please go to the section directed at registered persons.

## **Booster doses**

Booster doses are not currently included in the regulations, but managers are strongly advised to encourage workers to take up booster vaccines if eligible, and a provision for booster vaccines may be added to the regulations in the future.

## **Residents**

If someone is a resident or being admitted as a resident, they and an accompanying friend or relative will not require proof of vaccination.

We will, however, continue to encourage people living in care homes to take up vaccination as soon as possible, building on the repeat visits that NHS colleagues have already made to care homes.

The regulations require prospective residents and their families visiting care homes to provide evidence of vaccination or medical exemption. Care home managers may want to consider remote visits via video link for any prospective residents who are not vaccinated. We will monitor the impact of this restriction for prospective residents.

## Emergency assistance

If someone is entering the care home for emergency assistance for an incident in the care home itself, or in relation to an incident in a neighbouring building (for example if access is required to respond to a fire), they will not need to show proof of vaccination or medical exemption.

It is the registered person's responsibility to use their professional judgement to determine whether a situation is an emergency in line with the guidance set out below. Registered persons will be expected to keep a log of all emergency situations, including details of the circumstances, during which people entered the home without showing proof of vaccination or exemption.

An emergency situation could include (but is not limited to):

- members of the public assisting in the event of flood or fire
- social workers responding to immediate safe-guarding concerns

## Emergency services

In addition to providing emergency assistance, emergency services staff attending the care home in the execution of their duties are exempt from the requirement.

This includes:

- members of the fire and rescue services attending the care home to execute their duties
- members of the police service attending the care home to execute their duties.
- members of the health service deployed for emergency response

## Friends, relatives and essential care givers

Friends, family (who also may be unpaid carers) and essential care givers will **not** need to show proof of vaccination or medical exemption.

Visits from family and friends are vital for the health and wellbeing of people living in care homes. It would be unjustifiably detrimental to residents to deprive them of contact with, and care from, their loved ones.

[Government guidance](#) should be followed on the Infection Prevention and Control measures which should be in place.

## **Urgent maintenance work**

If work is only being done outside the care home and individuals carrying out maintenance do not need to enter the care home, then these individuals do not need to show proof of vaccination or medical exemption.

If work is required inside the care home, then individuals carrying out maintenance will need to show proof of vaccination or medical exemption.

However, if urgent maintenance work is required in the event of a risk to life or continuity of care, workers are exempt from these requirements. This could include (but is not limited to):

- failure or breakdown of the gas, electricity or water supply
- dangerous electrical fault
- serious damage caused by fire, flood, storm or explosion
- burst water service
- serious roof leak
- gas leak
- any fault or damage in the care home that makes the care home unsafe or insecure
- a serious fault in a lift or staircase

It is the manager's responsibility to use their professional judgement to determine whether a situation requires urgent maintenance work. Managers will be expected to keep a log of all urgent maintenance work during which people entered the home without showing proof of vaccination or medical exemption, and a short description of the incident for record keeping purposes.

## Death and bereavement

People do not need to show proof of vaccination or exemption if they are visiting a resident who is dying (that is in their last days of life) or they are providing comfort or support to a resident following the death of a relative or friend.

Those performing spiritual rituals for a resident would therefore also not need to show proof of vaccination status.

Funeral Directors and their staff will have to show proof of vaccination or exemption when entering the care home.

## Under 18s

A person under the age of 18 does not have to have provide evidence of vaccination or exemption before entering a care home. Frontline health and care staff aged 16 and over are eligible for a vaccine and should make sure they get a full course of an MHRA approved COVID-19 vaccine before they turn 18. All 17 year olds will be able [to book a vaccine](#), up to 3 months before their 18th birthday.

Visiting professionals who are under 18 will be able to enter the care home without showing proof of vaccination status, but may need to demonstrate proof that they are under 18. As soon as they turn 18, they will not be able to enter the residence until they have had a full course of an MHRA approved COVID-19 vaccine.

For further guidance on employing 16 and 17 year olds please go to Skills for Care's [guidance on employing workers aged 16 and 17](#).

## Students

All students who enter the care residence as part of their studies will need to show proof of vaccination or exemption, unless they are under 18 or visiting as family or a friend of a resident.

## Volunteers

All volunteers who enter the care residence will need to show proof of vaccination or exemption, unless they are under 18.

## **Staff travelling from non-care settings**

Anyone who enters a care home as part of their professional responsibilities will need to show proof of vaccination unless they are exempt. Therefore, staff (such as trainers) who normally work in non-care settings (such as in the company headquarters) will still need to be vaccinated if they enter a care home. This also includes staff who may work in the home on a part-time or occasional basis, to deliver non-care-related services, such as hairdressing, maintenance, or activities.

## **Entering a care home for a job interview**

Anyone who enters a care home for a job interview must show proof of vaccination unless they are exempt.

If someone intends to have the vaccination but is not yet vaccinated, the interview should take place outside of the care home or remotely (via video call or telephone).

## **Recruitment of new staff**

The regulations also apply to new staff recruited by the registered provider. It is important to note that only new recruits that have had a full course of an MHRA approved COVID-19 vaccine or are medically exempt from the requirement are eligible to work in the care home.

Care homes should notify prospective staff of the requirement at the start of the application process and undertake appropriate checks, during the recruitment process, to ensure the individual is eligible to work in the care home. It will only be possible for a newly appointed member of staff to start working in the care home once they have provided evidence of their vaccination status or a medical exemption.

## **Making postal, courier or other deliveries and collections**

The requirement only applies to those entering the inside of a care home. As long as someone is not entering the building, those people making postal, courier or other deliveries or collections would not need to show proof of their vaccination or medical exemption.

If, for example, a postal employee must enter the inside of the care home, as the package is too heavy or large for a staff member to lift, then they must show proof of vaccination or exemption.



## **Devolved administrations**

While the regulations apply to all CQC registered care homes in England, people who live in Scotland or Wales but work in England must still show proof of vaccination or exemption in English care homes.

## **5. General guidance on demonstrating evidence**

### **Required evidence**

In order to enter a care home, individuals must be able to demonstrate that they have received a complete course of their COVID-19 vaccination, unless exemptions apply. A complete course may refer to one or two doses of the vaccine, depending on the type of vaccine. It does not cover booster doses. Extending the policy to cover booster doses would require amending the regulations and be subject to parliamentary approval.

The registered person (or those acting on behalf of the registered person) at the care home needs to satisfy themselves of the identity of the person entering the care home and their proof of vaccination.

### **How to demonstrate evidence of vaccination**

NHSX are considering how the NHS COVID Pass service could be used to support registered persons and staff to check and demonstrate vaccine status. In the interim, registered persons can choose to use the existing NHS COVID Pass service to view an individual's vaccination status.

### **If the member of staff lives in England**

Individuals that have been vaccinated by the NHS in England may demonstrate their vaccination status using the NHS COVID Pass service via the following three routes:

- The NHS App
- the NHS website – NHS.uk
- the NHS COVID Pass letter

An individual's NHS appointment card cannot be used as proof of vaccination status.

### **NHS App**

An individual's vaccination status can be found within the NHS COVID Pass service of the NHS App.

The registered person (or those acting on the behalf of the registered person) would be able to take this as proof of the individual's vaccination status to verify that they have had a complete course of a COVID-19 vaccination.

Further guidance for managers on checking the vaccination status of people entering a care home can be found in the section of this document directed at registered persons.

The NHS App is available to download - more information about the app and how to download it can be found via [NHS App - NHS \(www.nhs.uk\)](https://www.nhs.uk).

### **Web-based solution**

The NHS COVID Pass can also be accessed via the NHS website. This displays the same information as is contained within the NHS app via an online web page - and can be accessed here via [Get your NHS COVID Pass](#).

### **Non-digital solution: NHS COVID Pass letter**

An individual can get an NHS COVID Pass letter sent to them in the post, which shows that they have been vaccinated against COVID-19. They can do this by:

- requesting a COVID Pass letter online via [Get your NHS COVID Pass](#) or calling 119 (for those vaccinated in England only)

This letter can then be presented by the individual to the care home to demonstrate their vaccination status. Individuals may need to wait 5 working days to receive this and should account for this to ensure they are able to demonstrate vaccination status by the time the regulations come into force.

Individuals need to have an NHS number and have been vaccinated in England, but they do not need to be registered with a GP surgery or have an NHS login to get an NHS COVID Pass letter.

### **If an individual lives in Scotland or Wales:**

Individuals vaccinated in Scotland can find information on how to obtain a record of their COVID-19 vaccination status from [nhsinformscot](https://nhsinformscot.nhs.uk). Individuals vaccinated in Wales can find information on how to obtain a record of their COVID-19 vaccination status from [gov.wales](https://gov.wales).

### **If an individual has been vaccinated outside of the UK**

We are aware some individuals will have been vaccinated outside of the UK. We are working on a solution to this and will provide further guidance on this as soon as possible.

## **Further guidance**

Further guidance for managers on how to check vaccination status can be found in the section of this document directed at managers.

Further guidance for staff on how to demonstrate vaccination to their employers can be found in the section of this document directed at staff.

## 6. General guidance on medical exemptions

For a small number of people vaccination is not appropriate due to clinical reasons. These people will be able to seek a clinically approved exemption from this requirement.

### Groups that can get a medical exemption

There are a range of circumstances in which an exemption may be granted which will reflect the Green Book on Immunisation against infectious disease ([COVID-19: the green book, chapter 14a](#)) and clinical advice from The Joint Committee of Vaccination and Immunisation (JCVI).

There will be a clear process for staff to follow if they think they may have a clinical reason to be exempt. This process will be aligned with certification for domestic events, exemptions from self-isolation for confirmed contacts and travel. Guidance for certification is being developed and we will add a link to this guidance here as soon as it's published.

We will be producing separate guidance for clinicians, which will align with guidance for vaccine certification in other public settings. This guidance will help clinicians to verify exemptions.

### Other measures to reduce risk of transmission

It is important that all those entering care homes, including those who are exempt from vaccination, continue to follow infection prevention and control measures, including the correct usage of PPE, to reduce the risk of transmission. However, these measures are not a substitution for the requirement for individuals to be fully vaccinated, which applies to all persons entering a care home unless exempt.

A risk assessment should be undertaken for those who are exempt from vaccination, to reduce risk of transmission. This might include a change to their duties where such a change is appropriate. It should also be taken into account that those that are exempt from vaccination may also be in the clinically extremely vulnerable category.

Providers should continue to ensure that those working in care homes continue to use appropriate PPE and follow [Infection Prevention Control procedures](#).

# 7. Guidance for registered persons

## Overview

From 11 November 2021 registered persons (the person registered with the CQC as a manager or service provider) must ensure that they do not allow anyone to enter the inside of a care home, unless they have had a complete course of doses of an authorised vaccine or fall into one of the exempted groups outlined in earlier sections of this document (Policy description and scope). While checks may be undertaken by other members of staff acting under instruction of the registered person, registered persons are ultimately responsible for ensuring compliance with the requirements. This chapter aims to give advice to registered persons on the implementation of the regulations. When deciding how to implement the regulations, the registered person must also refer to the [Code of Practice on the prevention and control of infections](#) which we are currently updating and will publish as soon as possible.

## Checking vaccination or exemption status

Registered persons (or those acting on behalf of the registered person) will have to check that all persons wishing to enter the care home have received a full course of vaccination, unless they are exempt. This includes checking, for example, care home staff, health care professionals, CQC inspectors, tradespeople, hairdressers and beauticians.

The requirement only applies in respect of persons entering the inside of the care home premises and it will be up to the registered person (or those acting on behalf of the registered person) to identify the most appropriate procedures to check vaccination status.

Compliance with the regulations would be an appropriate reason for not granting entry to a CQC inspector or another individual, unless they are exempt.

In cases where care homes have multiple buildings, care homes may prefer to have check points at the entrance of each building. Alternatively, registered persons may opt for there to be a single check point to ensure that all individuals are verified as being vaccinated or exempt before proceeding to access other buildings.

The guidance on demonstrating evidence section of this document outlines which forms of evidence are acceptable as evidence to demonstrate vaccination status. An individual's NHS appointment card should not be accepted as sufficient evidence. We are aware some individuals will have been vaccinated outside of the UK. We are working on a solution to this and will provide further guidance on the acceptable evidence for this as soon as possible.

## Recording vaccination or exemption status

The registered person should keep a record of:

- the vaccination or exemption status of staff members and the date that the status was last checked
- the vaccination or exemption status of those entering the care home unless exempt and the date that the status was last checked

There is no requirement for registered persons to record the clinical reason behind the exemption - they should only record whether a person is medically exempt or not.

Individuals entering a care home only need to demonstrate vaccination status on the first occasion they enter or register, and the registered person should record their status on the care home's local system (for example IT system, paper file etc). All subsequent checks of individuals who have previously demonstrated vaccination status can be carried out via the records which will state the date and time the individual proved their status. Care homes will be able to use these records as proof of vaccination status, to reduce the burden of having to re-check every individual. Care home managers can also decide to check more often, if preferred, but there is no requirement to do so. Records should be checked regularly to ensure they are up to date.

The registered person will be able share these records with CQC to demonstrate they have checked 3rd party medical exemptions.

The regulations expressly state that a care home may process information about vaccination or medical exemption status, but this must be done in a way that is consistent with data protection legislation (see further below).

**Example:** A small care home provider which has limited technology for recording vaccination status may wish to use their manual visiting log to record the vaccination or exemption status of visiting professionals (people not employed directly by the care home). This could be as simple as adding a column to the existing logbook and adding a signature to indicate that vaccination status has been confirmed.

## Keeping written records and General Data Protection Regulation (GDPR) compliance

Care homes must keep records to demonstrate compliance with the regulations.

Care homes need to ensure that they process information about vaccination or medical exemption in accordance with data protection legislation. All care homes should have

existing data processing policies as part of their pre-existing data protection obligations, for example around privacy information. All existing data protection and privacy documentation and assessments should be reviewed and updated to ensure compliance with the regulations.<sup>4</sup>

Data about vaccination or medical exemptions is health data and therefore special category data for the purposes of the Data Protection Legislation including the Data Protection Act 2018 and the UK GDPR.

## **Data protection principles**

Care homes should at all times ensure compliance with the applicable data protection legislation (Article 5 of the GDPR and the Data Protection Act 2018). In line with existing requirements, it is important for the Care Home to have a policy document outlining procedures for securing compliance with data protection principles, and outlining policies about retention and removal of personal data.

Care homes will need to consider who has access to the data; how much data they process; how long they retain the data for; how the data is stored; whether any privacy information needs updating; whether any Data Protection Impact Assessment requires updating; and whether any Appropriate Policy Documents require updating.

## **Special considerations for visiting professionals**

NHS England and Improvement will issue specific guidance for healthcare professionals who visit care homes so that they are aware of the implications of the regulations.

For visiting professionals contracted to the home, registered persons may decide that the best way to secure that a person has been vaccinated or is exempt prior to entering a care home, is to include the requirement in any contract for the provision of services provided by that person. Independent legal advice should be sought before entering into any contract. However, registered persons may also choose other methods to secure compliance with the requirements under the regulations.

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<sup>4</sup> Data Protection Impact Assessments and Appropriate Policy Documents will need to be reviewed and updated with any additional lawful basis under Art 6 UK GDPR and Art 9 UK GDPR identified for processing for this new process



The regulations provide an exemption where it is reasonably necessary for a person to provide urgent maintenance assistance (see section on urgent maintenance assistance) with respect to the care home or emergency assistance.

Some people, especially those who do not visit care homes regularly, may not be familiar with the requirement to be vaccinated or medically exempt and may need time to obtain proof of vaccination or medical exemption. Therefore, when booking appointments or making arrangements for visits, it will be helpful to explain the regulations. A service provider can then ensure that they send a staff member who has proof of vaccination or medical exemption, or so that a sole trader can obtain proof of vaccination or medical exemption. For further guidance for visiting professionals see Chapter 'Guidance for visiting professionals'.

Where a service provider is unable to provide services via a person who is vaccinated or medically exempt, and the services cannot be provided outside the care home, it may be necessary to make alternative arrangements for provision of the service.

## The role of the Care Quality Commission

The requirement forms part of the [fundamental standards](#) and will be monitored and enforced in appropriate cases, by the Care Quality Commission (CQC). CQC has published a statement on their [website](#) outlining their approach to a) registration b) ongoing monitoring and c) enforcement. A summary of the statement is included below.

### Registration

CQC will seek assurance that those registering for the first time - or amending their registration with the CQC - have a robust governance process to:

- monitor vaccination and COVID-19 status of staff
- ensure staff maintain an up-to-date vaccination status (by providing guidance and assistance for staff to get vaccinated) and ensure staff maintain up-to-date best IPC practice
- monitor vaccination and COVID-19 status of personnel entering the care home, and
- where applicable, make reasonable adjustments to ensure people using the service receive safe care and treatment

For new manager applications CQC will seek assurance that:

- applicants are fully vaccinated or exempt

- applicants are aware of their duties in relation to the new regulations regarding COVID-19 vaccination

## Ongoing monitoring

The monitoring of the requirement is the responsibility of CQC.

CQC propose to add the following question to the Provider Information Return (PIR) once the regulations are in force:

*'How are you assured that those you employ and deploy within your service have had their mandatory vaccinations?'*

CQC will also build a similar question into their monitoring approach once this duty is in place. Further information will be provided in due course.

## Inspection

On inspection, CQC will look for evidence to confirm systems and processes are in place to comply with the requirement.

Registered persons will not be required to show a record of the evidence itself, but will need to provide assurance that systems and process are in place to ensure that individuals who enter the premises are fully vaccinated or exempt. Registered persons may choose to make a record of the evidence they have seen for their own internal staff employment record keeping. If the evidence is collected and recorded, all personal data must be handled in accordance with UK GDPR. This includes providing individuals with privacy information at the stage their data is being collected. Please refer to the [guidance](#) from the Information Commissioner's Office to ensure you have appropriate lawful basis, technical and security measures in place to protect personal data.

## Enforcement

Any enforcement activity which is generated as a result of non-compliance with the amended regulations will be undertaken on a proportionate basis, and based on the CQC's assessment of the impact on quality of care and people's safety, in line with CQC's existing enforcement policy. The CQC will decide what action to take based on proportionality and in line with their normal approach to enforcement.

Further information on CQC's enforcement policy can be found here:

[https://www.cqc.org.uk/sites/default/files/20150209\\_enforcement\\_policy\\_v1-1.pdf](https://www.cqc.org.uk/sites/default/files/20150209_enforcement_policy_v1-1.pdf).

## **Support for managers and registered persons**

This section outlines the resources that are currently available to registered persons to support them to comply with the regulations.

### **Resources to support communication with staff to encourage vaccine uptake**

A range of resources is available to support registered persons and staff to have conversations about vaccine safety & efficacy, as well as financial support to access to vaccination. More information and links to these resources can be found in the introduction section of this document.

### **Skills for Care platform**

Skills for Care has developed a dedicated [one stop webpage](#) that is bringing together a range of support, information and resources together to support social care employers to continue to recruit and retain their staff in a challenging environment.

Resources include:

- workforce planning and commissioning
- people performance management
- supervision guide
- wellbeing resources
- values based recruitment and retention resources
- workforce productivity model

### **Good employment practice**

We have included guidance on good employment practice in Annex A.

## 8. Guidance for staff

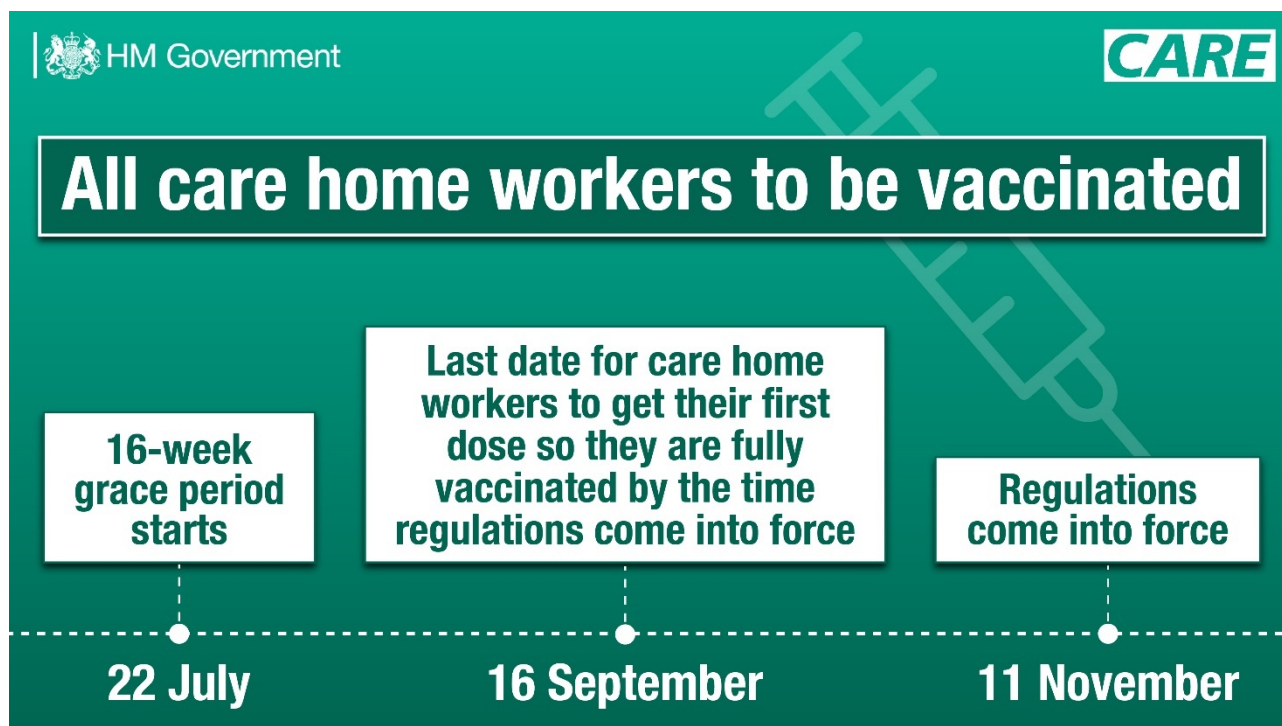
### What the policy means for me

From 11 November 2021, it will become law that anyone entering a care home must have had a complete course of an authorised COVID-19 vaccine. For care home staff, this means you will only be able to continue to work inside a care home if you are vaccinated, unless you are

- a) under the age of 18
- b) medically exempt

There are other groups of people who may enter the care home and may not have to show that they have been vaccinated.

### Key dates<sup>5</sup>



Key dates to bear in mind are: 22 July (this is when the grace period starts), 16 September (last date for care home workers to get their first dose so they are fully vaccinated by the time the regulations come into force) and 11 November (regulations come into force).

<sup>5</sup> These dates are correct as of the date of publication.

## How to demonstrate my vaccination status

NHSX are considering how the NHS COVID Pass service could be used to support registered persons and staff to check and demonstrate vaccination status.

In the interim, if you have been vaccinated by the NHS in England you can demonstrate your COVID-19 vaccination records using the NHS COVID Pass service via the following three routes:

- the NHS App
- the NHS website – NHS.uk
- the NHS COVID Pass letter

Your NHS appointment card cannot be used as a proof of vaccination status.

If you have been vaccinated in Scotland you can find information on how to obtain a record of your COVID-19 vaccination status at [nhsinform.scot](https://nhsinform.scot). If you have been vaccinated in Wales you can find information on how to obtain a record of their COVID-19 vaccination status at [gov.wales](https://gov.wales).

We are aware some individuals will have been vaccinated outside of the UK. We are working on a solution to this and will provide further guidance on the acceptable evidence for this as soon as possible.

## Responsibility for checking that people are vaccinated or exempt

Registered persons (the person registered with the CQC as a manager or service provider) are ultimately responsible for ensuring that everyone who enters the care home is vaccinated or exempt. They are advised to use their professional judgement when delegating these checks to other members of staff.

If you are exempt, the registered person will not know the reason for your exemption, only the fact that you are exempt.

## Exemptions

Vaccination may not be appropriate for you due to clinical reasons. In this case, you will be able to seek a clinically approved medical exemption from this requirement

There will be a clear process for you to follow if you think you may have a clinical reason to be exempt. This process will be aligned with certification for domestic events, exemptions from self-isolation for confirmed contacts and travel. Guidance for certification is being developed and we will add a link to this guidance here as soon as it's published.

Managers should do a risk assessment for those who are exempt from vaccination. This means they will evaluate the potential risk to the spread of COVID-19 caused by unvaccinated (but exempt) members of staff entering the care home. They may put in place measures to help reduce this risk, for example by asking exempt members of staff to wear more or different PPE or by suggesting a change to their duties.

## **Redeployment**

If you are unable to provide proof of vaccination or exemption, then your manager should explore all options available to you. This could include moving you to an alternative role for which vaccination is not required. You should speak to your manager about your options as soon as you can. You should not assume that it will be possible for you to be redeployed.

## **Dismissal**

If you are unable to provide proof of vaccination or exemption, then your manager should explore all options available to you. However, you should note that the regulations may provide a fair reason for dismissal if you are not vaccinated or medically exempt.

## **Concerns about staffing levels in care homes**

Care homes should already have contingency plans which cover events which may affect the safe running of the service. This would normally include staff shortfalls.

Wherever possible, we would expect the registered person to take reasonable steps to cover the staff shortfalls themselves in the short term through the use of bank or agency staff. If this option is not available to them, they should flag this with the local authority who may be able to offer or signpost the registered provider to sources of assistance. Guidance for local authorities is set out in Chapter 'Guidance for local authorities'.

If the registered provider has concerns that staffing levels affect their ability to operate the service safely, they are required to notify CQC under Regulation 18 (2) (g) of the Care Quality Commission (Registration) Regulations 2009: any event which prevents, or appears to the service provider to be likely to threaten to prevent, the service provider's

ability to continue to carry on the regulated activity safely, or in accordance with the registration requirements, including— an insufficient number of suitably qualified, skilled and experienced persons being employed for the purposes of carrying on the regulated activity.

The CQC have provided [further information on statutory notifications](#).

ACAS have produced [guidance on raising issues with your employer](#).

## What other measures (besides vaccination) should my employer have in place

It is important that all those entering care homes continue to follow infection prevention control measures, to reduce the risk of transmission.

[Guidance on how to work safely with PPE](#).

[Guidance on how to access test kits and how to use PCR and rapid lateral flow test kits](#).

[Guidance on how to claim statutory sick-pay if you are self-isolating](#).

## What support is available

If you are concerned or have any queries about getting vaccinated, we encourage you to have a conversation with your registered manager or your clinician to help you make an informed choice. The Government has produced a range of resources, all of which are available in 19 different languages. Links to these resources can be found in the introduction section of this document.

## How do I get the vaccine

[COVID-19 vaccination: booking an appointment letter - GOV.UK \(www.gov.uk\)](#)

### SCENARIO 1- What if I am under 18?

You will not have to show proof of vaccination or exemption if you are under 18. However, once you turn 18, you will not be able to continue working in a care home if you are unvaccinated. You should plan to get a full course of an MHRA approved COVID-19 vaccine before you turn 18- this means booking your first vaccine dose at least 8 weeks before your 18th birthday. If you are already a frontline health and care worker and you are

over the age of 16, you are eligible for a vaccine. If you are not currently a health or care worker, you will be offered a vaccine 3 months before your 18th birthday.

### **SCENARIO 2- What if I live in Scotland or Wales but work in England?**

As this law applies to anyone entering a care home in England, you will have to be vaccinated. Individuals vaccinated in Scotland can find information on how to obtain a record of their COVID-19 vaccination status from [nhsinform.scot](https://nhs.uk/inform-scot). Individuals vaccinated in Wales can find information on how to obtain a record of their COVID-19 vaccination status from [gov.wales](https://gov.wales).



## 9. Guidance for local authorities

From 11 November 2021, care homes must only allow individuals who are fully vaccinated against COVID-19 (or exempt) entry inside of a care home. Further detail of the policy is set out in Chapter 'The policy'. Detail of the evidence required is in Chapter 'General guidance on demonstrating evidence', and detail on medical exemptions is in Chapter 'General guidance on medical exemptions'. Local authorities have an important role to play in the implementation of these regulations.

Throughout this pandemic, local authorities have taken on extra responsibilities with dedication and compassion. They have played a vital role in rolling out vaccination in care homes and supporting providers to ensure care homes are as safe as possible.

As employers who run care homes, the guidance set out in Chapter 'Guidance for registered persons' applies to local authorities.

As employers, and contractors, of visiting professionals, the guidance set out in Chapter 'Guidance for visiting professionals' applies to local authorities.

As commissioners of care homes, local authorities should continue to work closely with care homes in order to help them build confidence in the vaccine. They should also help ensure access to rapid vaccination for those who decide to take up the offer. Examples of this work include:

- facilitating conversations between clinicians and individuals who are hesitant to address their concerns.
- supporting registered managers to have open conversations with hesitant staff
- arranging conversations with midwives for fertility concerns
- working with the local NHS to arrange visits from GPs to care homes to vaccinate staff and residents.
- providing access to bespoke resources (webinars, Q&As, one-to-one meetings) from trusted sources, and signposting resources from the Department of Health and Social Care
- ensuring providers have funding available to them via the Infection Control Fund. This can help pay staff their usual wages to attend work or a vaccination facility for the purposes of being vaccinated. This can also help cover costs associated with reaching a vaccination facility.
- engaging with local community and faith leaders to build confidence in the vaccine

This work is consistent with the role of local authorities as providers of the local public health function. Local authorities play an important role as a source of advice to care homes on infection control and supporting take up of vaccination.

Local authorities should also be working with care homes to support them to review and strengthen their business continuity plans. Local authorities should also be reviewing their own continuity plans to be clear on the potential impact on services locally and be able to respond. For example, by exploring emergency deployment of staff and mutual aid to resource care homes in the event of staff shortages.

As noted above, local authorities should work to ensure private providers are able to meet the requirement by the end of the 16-week grace period. They should also ensure their own care homes are working towards adherence and that they are able to continue to provide services.

## **Targeted support for local authorities**

We are working with Skills for Care to ensure that resources are in place. This includes guidance and best-practice to support providers and local authorities with capacity and workforce planning, recruitment and well-being. Skills for Care will also provide local and national workforce support to local authorities and employers.

We will continue to work with local authorities to drive uptake and ensure access to vaccines, particularly in areas with the lowest uptake. We will continue to review the need for further support. [Skills for Care resources](#) can be accessed via the link.

## **Further support**

Local authorities can seek further support from the Local Government Association [COVID-19 service information](#) and the Association of Directors of Adult Social Services in England (ADASS) [ADASS](#).

## **10. Guidance for residents and relatives and friends of residents**

### **What is changing**

From 11 November 2021 care homes must only allow individuals who are fully vaccinated against COVID-19 (or exempt) entry inside of a care home. This will not include:

- residents
- individuals providing emergency assistance and members of the emergency services
- individuals providing urgent maintenance assistance
- friends or relatives of the resident
- individuals visiting residents who is dying or offering bereavement support
- under 18s

Further detail of the policy is set out in Chapter 'The policy' of this guidance. Detail of the evidence required is in Chapter 'General guidance on demonstrating evidence', and detail on medical exemptions is in Chapter 'General guidance on medical exemptions'.

### **How these changes will affect me**

This policy has been introduced to ensure the safety of you, other residents and staff to reduce the risk of COVID-19 spreading in the home.

For more information on why vaccination is important please see the introduction of this document.

### **What will happen to my care if the people who care for me are not vaccinated**

We are working with care providers to help them support all their staff to take up the opportunity to be vaccinated. Staff will need to provide proof of COVID-19 vaccination or medical exemption by 11 November 2021. If a staff member cannot provide this, they may

begin working in another role and no longer work with you. If you are worried or have questions about this, please speak to a staff member or the manager of your care home.

If any staff members do leave the sector, guidance and resources will be in place for providers. This will ensure they can recruit a suitable replacement who can provide the care that you need.

As medical exemptions apply, not all staff members will have received a vaccine as some may have a health-related reason not to. If you are worried about this, you can speak to a staff member or the manager of your care home.

## **Visiting loved ones in a care home**

The policy does not apply to family and friends.

## **Visitors who are not family or friends**

If you are inviting professionals (for example hairdressers) into the care home, the requirement will apply to them. You should speak to a member of staff to or your care home's manager to discuss how they can comply with the requirement.

## **Support available if the care home doesn't have enough vaccinated staff**

It is unlikely that a care home will be affected in this way. We have given care homes 16 weeks' notice to allow them time to work with staff who are unvaccinated. This will help to make sure they can meet their legal requirements as a provider of your care. We know many care homes continue to actively recruit staff who have had the vaccine to join their teams.

There is support in place where care homes have concerns about their ability to safely staff the service. This includes care homes raising their concerns with the local authority and the Care Quality Commission. Care homes should also work with colleagues in the sector to make sure they can continue to care for you safely.

If you have any other questions about this policy and how it might impact you and other residents, please speak to a staff member or your care home's manager.

# 11. Guidance for visiting professionals

From 11 November 2021 care homes must only allow individuals who are fully vaccinated against COVID-19 (or exempt) entry inside of a care home. This requirement will apply to those visiting a care home in a professional capacity unless exempt.

Further detail of the policy is set out in Chapter 'The policy' of this guidance. Detail of the evidence required is in Chapter 'General guidance on demonstrating evidence', and detail on medical exemptions is in Chapter 'General guidance on medical exemptions'.

## Scope

A wide range of people not based in a care home may need to enter a care home as part of their work. This includes public servants including visiting healthcare professionals or social care workers, as well as those delivering non-care services such as hairdressing, maintenance, or activities.

Please go to 'what is the policy' in Chapter 'The policy' to see if it applies to you.

## Emergency visits

The regulations provide an exception where it is reasonably necessary for someone to provide urgent maintenance or emergency assistance with respect to the care home.

The registered manager of the home will be able to determine what would constitute an emergency for their own setting. The exemption applies to all emergency services staff attending the care home in the execution of their duties. The exemption would also apply to someone who is entering the care home for emergency assistance for an incident in the care home itself.

We expect urgent maintenance assistance to only apply where there is a significant impact on the quality of care of residents or risk to life.

## Exemptions

Exemptions to the requirement can only apply for a person to provide urgent maintenance or emergency assistance with respect to the care home. It is for the registered manager of the care home to make that decision.

## **Evidence**

Please refer to Chapter 'General guidance on demonstrating evidence' for evidence of vaccination and Chapter 'General guidance on medical exemptions' for evidence of a medical exemption.

## **Responsibility**

It is the responsibility of the registered manager to confirm that those entering have correct proof of vaccination or exemption. However, you should ensure you and your staff have the correct proof or you may not be able to enter the care home. The registered care home manager may also request that this requirement is included in any contracts between the care home and your employer.

## **Apprentices (potentially under 18s)**

Frontline health and care staff over the age of 16 are eligible for a vaccine. These individuals should make sure they get a full course of an MHRA approved vaccine before they turn 18.

Other visiting professionals will not be able to enter the care home until they've had a full course of a COVID-19 vaccine. All 17-year olds will be able to [book a vaccine](#), up to 3 months before their 18th birthday.

Apprentices under the age of 18 would be exempt and therefore able to enter the care home without proving their vaccination status. They should however be able to provide evidence that they are under 18 prior to entering the care home.

## **Surrounding grounds of the care home**

The regulations will not apply to any surrounding grounds of the care home. Any visiting professionals who are only working in the grounds, and not entering the building will not have to show proof of vaccination or exemption. However, if you are regularly visiting a care home, we would recommend you obtain correct proof of vaccination or exemption. This is because you may come into regular contact with service care users and staff and you will be asked to provide proof before entering.

## **PPE**

Infection Prevention Control measures such as PPE are still required in residential care settings. PPE requirements will remain in line with current government guidance which can

be found [here](#). We would advise you to check this beforehand to ensure correct compliance.

# Annex A: Good employment practice

## Advice on retention and recruitment – Skills for Care

Skills for Care has developed a dedicated [one stop webpage](#). This brings together a range of support, information and resources to support social care employers to retain staff and, where needed, to recruit new staff. This includes case examples where employers have successfully encouraged their staff to take up the vaccine ahead of this policy being implemented. These will help share good practice from across the sector.

## Policy

Care homes should consider adopting a written vaccination policy. This might cover matters, such as:

- whether staff over 18 are entitled to time off work (with or without pay) to be vaccinated or obtain evidence of medical exemption
- the time by which a care home will expect evidence of vaccination or exemption. This will ensure it can plan its workforce and take formal steps in relation to staff over 18 who are neither vaccinated nor medically exempt.
- any arrangements relating to leave if staff experience side effects from vaccination. For example, it may be preferable to avoid a large number of staff being vaccinated on a single day.
- how data about vaccination or exemption will be processed
- how any formal policies will apply to staff who cannot comply with the requirement
- how vaccination requirements of new recruits and agency staff will be addressed
- any equality issues that arise from complying with the regulations (see section on Equality Act 2010)



## **Guidance from the Advisory, Conciliation and Arbitration Service (ACAS)**

ACAS has produced a range of guidance. This should be useful for employers when considering good employment practice as part of implementing vaccination as a condition of deployment.

[ACAS - Getting the coronavirus vaccine for work](#)

[ACAS - Advice on dismissals](#)

[ACAS - Disciplinary and grievance procedures](#)

[ACAS - How to raise a problem at work](#)

[ACAS - Dealing with a problem raised by an employee](#)

[ACAS - Tailored support for your workplace](#)

[ACAS - Informing and consulting employees](#)

[ACAS - Notice periods](#)

[ACAS - Pay during the notice period](#)

[ACAS - Discrimination, bullying, and harassment](#)

[ACAS - Reasonable adjustments](#)

[ACAS - Hiring someone](#)

## **Early engagement with the workforce**

Care homes should engage with their workforce early about the new regulations. This will help to ensure that people are able to comply with them. Care homes can use the grace period to:

- consider and amend their policies including if necessary any privacy information and Data Protection Impact Assessment
- implement new or different working practices

The grace period can also be used to engage with staff and service providers about:

- the vaccination requirement

- the need for people over 18 providing work or services to evidence vaccination or medical exemption
- the potential consequences of not meeting the requirement on time

## **Collective engagement**

Where a trade union is recognised or employee representatives are in place, there may be a legal duty to consult. This is because any measures may affect the health and safety of staff.

Where a trade union is recognised or employee representatives are in place, this may be the best forum to begin with. They can help with consulting, understanding and addressing any collective issues, and discussing practical and operational issues.

Before and or after any collective engagement, it may be helpful to provide a written summary to staff. This can be used to explain the requirement and what it means for them. This may avoid misunderstanding about what is required, and what it means for staff.

## **Individual engagement**

Individual engagement and information gathering may then be used to identify those who:

- have been vaccinated or are medically exempt, or are under 18, and can evidence it
- have been vaccinated or believe that they may be medically exempt, but cannot evidence it
- have not yet been fully vaccinated but will arrange to be fully vaccinated in time
- have not yet been fully vaccinated and are unlikely to be fully vaccinated in time
- are over 18 and not medically exempt, but do not wish to be vaccinated

Care homes can then start to arrange their records to show which people have satisfactorily evidenced vaccination or exemption.

It is recommended that any concerns raised by an individual should be explored. Staff should be provided with a reasonable opportunity to be vaccinated or obtain evidence they are exempt before any formal action is taken. The consequences of not complying with the requirement should be clearly explained. This should include when the requirement must be complied with, and what steps will be taken if it is not complied with.

Care homes will also need to consider their staffing levels in light of individual consultation. A care home will need to consider whether to replace staff or make other arrangements to operate appropriately if unable to deploy existing staff.

Where staff are away from work, for example on maternity leave, sabbatical, or long-term sick leave, care homes should make appropriate arrangements in good time. This is to avoid lack of knowledge of the requirement being a barrier to returning to work on time.

Care homes will also need to plan for staff who are under the age of 18 on 11 November 2021 but will turn 18 later. This is because the requirement to be vaccinated or medically exempt will apply when a staff member reaches the age of 18.

## **Staff who are not vaccinated or exempt**

Where a member of staff is not vaccinated and cannot provide evidence that they are exempt, care homes should explore all options. This includes redeployment into any alternative role where vaccination or medical exemption is not required. This could include roles without direct contact with residents outside of the care home (for example at a head office).

Care homes might also need to consider paid or unpaid leave for their staff. This cannot be a long-term solution, because the regulations do not have a time limit. Leave may be considered appropriate where a worker demonstrates intent to get fully vaccinated but has not completed the full course by 11 November 2021. This may also apply where there are delays in obtaining evidence of medical exemption.

Care homes should communicate the timescales they will adopt as early as possible and be clear about what will happen if workers miscommunicated timescales. Timescales will need to allow for any formal process to be followed and for notice of termination to be given if necessary.

Some care homes – having exhausted alternative options - may have to consider dismissing employees or terminating contracts of workers. This should only apply to those over 18 who are not vaccinated and have not obtained a medical exemption. Where this is the case, care homes must comply, at all times, with employment and equalities law and adhere to good employment practice.

## **Fair dismissal:**

Employees who have been continuously employed by their employer (or by associated employers) for two years usually have the right not to be unfairly dismissed.

Workers do not have the same unfair dismissal protection, but both workers and employees are protected under the Equality Act 2010 (see below).

An employee may be fairly dismissed if:

- There is a potentially fair reason to dismiss
- The reason is sufficient to justify dismissal
- The employer has followed a fair procedure

### **Fair reasons to dismiss staff who don't comply with the regulations**

The regulations may provide a fair reason to dismiss an employee over 18 who is not vaccinated or medically exempt.

A potentially fair reason could be:

- the employee cannot continue to work in their position without the employer contravening a duty or restriction imposed by or under an enactment, or
- some other substantial reason of a kind as to justify the dismissal of an employee holding the position which the employee held.

Where it is possible, under the contract of employment, to redeploy an employee, these reasons for dismissal may not be applicable. This would be the case when the employee can be redeployed to other duties where vaccination is not a requirement

Where an employer continues overall to need the same number of employees to carry out the work in question and cannot redeploy everyone who is neither vaccinated nor exempt, this will not amount to a redundancy situation. The reason for termination of employment will be dismissal, not redundancy, and dismissed employees will not be entitled to a redundancy payment. However, in these circumstances, the employer will need to consider how it fairly selects employees for redeployment or dismissal. Selection criteria should be objective and non-discriminatory.

Other reasons for dismissal may arise with the introduction of the requirement. For example, if an employee dishonestly provided false evidence of vaccination, this is likely to amount to misconduct and may even amount to gross misconduct.

However, not being vaccinated or medically exempt will not in itself amount to misconduct.

## Care homes must act reasonably/fairly

Where a care home is contemplating dismissal for a potentially fair reason they must also:

- follow a fair procedure, and
- act reasonably in treating the potentially fair reason as a sufficient reason for dismissal

Steps that a care home should consider taking before dismissing an employee include (note these are non-exhaustive):

- consulting the employee (see Individual engagement, above)
- warning the employee of the risk of dismissal if they do not evidence they are vaccinated or exempt within specified timescales
- giving the employee an opportunity to explain their circumstances and any reasons they should not be dismissed. This should usually be at a meeting, but this can be held virtually or if necessary by telephone
- allowing the individual to be accompanied by a trade union representative or work colleague
- taking and sharing notes of any formal meetings, to avoid misunderstandings or disputes about what was said
- exploring alternatives to dismissal, for example redeployment opportunities where vaccination is not required
- acting consistently where cases are alike, but also considering relevant differences between cases
- deciding on an outcome and communicating the outcome to the employee
- providing a right of appeal against dismissal

Care homes should consider and publicise their policy if a dismissed employee appeals against dismissal and completes a vaccination course or obtains a medical exemption after dismissal, but before the appeal is heard. Care homes will need to consider whether they will reinstate employees in such circumstances, and whether they will pay back pay on reinstatement. Again, the employer should act consistently and fairly. Leave may be an appropriate alternative to dismissal where a worker demonstrates intent to get fully vaccinated or obtain evidence of medical exemption. This may also justify a delay in giving notice.

## Notice pay

It is recommended that any staff whose contracts are terminated because they do not comply with the regulations are given their minimum statutory notice. They should also be given any additional contractual notice or, where appropriate, pay in lieu of notice. Ordinarily, not meeting the requirement to be vaccinated or have a medical exemption will not justify dismissal without notice.

## Equality Act 2010

It is against the law to discriminate against anyone because of:

- sex
- race
- religion and belief
- disability
- age
- pregnancy and maternity
- sexual orientation
- gender reassignment
- marriage and civil partnership

These are known as 'protected characteristics'.

Unlawful discrimination can include (among other things):

- direct discrimination – treating someone with a protected characteristic less favourably than others because of a protected characteristic.
- indirect discrimination – putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage and which cannot be justified. Pregnancy and maternity is not a relevant protected characteristic in relation to indirect discrimination.

Direct discrimination cannot usually be justified, though, in very limited circumstances direct discrimination because of age may be justifiable.

Indirect discrimination can occur where an unjustifiable requirement is placed on everyone before they can enter a care home, such as to be vaccinated or subject to medical exemption, but it has a worse effect on people with a particular protected characteristic. However, where that requirement is capable of justification in relation to all protected characteristics there is no indirect discrimination. Justification involves showing that the rule is a proportionate means of achieving a legitimate aim. The same tests apply to the dismissal of a worker because of the requirement not to allow an unvaccinated person to enter a care home unless they are exempt.

## **The regulations**

The regulations require care homes only to allow those who are vaccinated or medically exempt workers, or those under 18 to enter a care home. As such, a care home will be able to take advantage of an exception to the usual rules prohibiting discrimination. The care home will also not contravene the Equality Act 2010 in relation to work, if the care home does anything it must do pursuant to the regulations. This is in so far as it relates to age, disability, religion, or belief.

So the exception sets out it will not be unlawful discrimination in relation to age, disability, religion, or belief for a care home to ensure that a person over 18 who has not been vaccinated and is not medically exempt does not enter the care home.

This exception to equal treatment does not extend to race, sex, sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership.

For example, a care home that chose to dismiss only the disabled staff because they were disabled would not be able to claim the benefit of this exception. This is because the regulations do not force the care home to choose to dismiss only disabled staff.

However, where a care home must dismiss some staff as a result of the regulations and chooses and selects staff in a fair and non-discriminatory manner the exception may be available because of the requirement of the regulations.

In the event that there was evidence that the requirement imposed by the regulations on those over 18 to be vaccinated or medically exempt put people at a particular disadvantage by reference to a protected characteristic, then a care home may, subject to the exception above, have to justify that treatment.

Compliance by a care home with the regulations is very likely to be a legitimate aim. As long as a care home cannot take other reasonable steps to avoid dismissing staff (for example, redeployment to a head office, and so on), it is likely to be able to show that

dismissal is a proportionate means of achieving a legitimate aim such that the justification will prevent there being any indirect discrimination.

A vaccination policy and the decisions made under it must not discriminate against workers.

For example, a care home which redeployed unvaccinated white employees to other work, and dismissed unvaccinated black employees, on the basis of race, would contravene the Equality Act 2010. Or a care home which provided a right of appeal against dismissal to heterosexual employees but not to homosexual employees would contravene the Equality Act 2010.

However, most unlawful discrimination is less obvious than this.

**Example 1:** a criterion for deciding which unvaccinated employees should be redeployed to other work might indirectly discriminate against people in relation to religion if it prioritised people who could work on Sundays and particularly disadvantaged Christian workers. Such a criterion would need to be justified as a proportionate means of achieving a legitimate aim to avoid contravening the Equality Act 2010.

**Example 2:** a disabled employee may have difficulties getting vaccinated in a specified timescale because of limited mobility, or may be less able to take part in a formal hearing by telephone. In these circumstances, a care home will need to consider whether reasonable adjustments need to be made to avoid putting the disabled person at a disadvantage. If the care home fails to make reasonable adjustments, it may contravene the Equality Act 2010 in relation to the disabled employee.

Collective and individual engagement can be good ways to identify and address potential contraventions of the Equality Act 2010.

Further information on the Equality Act 2010 can be found on the Equality and Human Rights Commission website: [Equality human rights - employment statutory code of practice](#)

The information set out above is for guidance only. The legal position can only be assessed by reference to the specific circumstances that apply. Care homes should consider taking their own independent legal advice.



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