



Mandatory vaccines: FAQs

What homes will the new rules cover?

All CQC-registered care homes, in England, which provide accommodation for persons who require nursing or personal care. This includes learning disability homes, and it is not just those care homes which have at least one person over the age of 65 living in their home as originally proposed.

What about other services, such as a children's residential service (who have learning difficulties) that are regulated by Ofsted?

At present these services are not covered but this is being actively considered – "it has become clear that there is a case for extending the scope of the policy to other high-risk groups and settings such as younger people's care homes and hospitals".

Is this likely to also cover supported living and domiciliary care services?

Not yet, but the Government has announced it will shortly be carrying out a public consultation in the coming weeks on making Covid-19 and flu vaccination a condition of deployment in healthcare and the wider social care sector.

Who will be required to have the vaccine?

All persons who enter a care home, regardless of their role. The requirement will apply to staff, agency workers and volunteers as well as any professionals visiting a care home, such as healthcare workers, tradespeople, hairdressers and beauticians, and CQC inspectors.

Are there any exemptions for staff?

Only staff with a prescribed medical exemption.

The Department of Health and Social Care (DHSC) has just published a 'Stakeholder Q&A' document which provides further details and indicates that exemptions will be limited.

The DHSC have confirmed the following:

- Medical exemption: "There will be a small number of people where the clinical advice is that the COVID-19 vaccination is not suitable for them. Further details on this will be outlined in guidance, which we will provide in due course. This guidance will give more detail about exemptions, 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)."
- Pregnant workers: "The Joint Committee on Vaccination and Immunisation (JCVI) has advised that pregnant women should be offered the COVID-19 vaccine at the same time as the rest of the population, based on their age and clinical risk group. There have been no specific safety concerns identified with any brand of COVID-19 vaccines in

relation to pregnancy. Real-world data from the United States show that around 90,000 pregnant women have been vaccinated, mainly with mRNA vaccines including Pfizer-BioNTech and Moderna, without any safety concerns being raised. Based on this data, the JCVI advises that it is preferable for pregnant women in the UK to be offered the Pfizer-BioNTech or Moderna vaccines where available. The regulations will apply to all staff working in a CQC-regulated care home for people requiring nursing or personal care in England, including those who are pregnant, unless they have a medical reason not to be vaccinated."

- Breastfeeding or trying to get pregnant: "The regulations will apply to all staff working in a CQC-regulated care home for people requiring nursing or personal care in England, including those who are breastfeeding or planning to get pregnant, unless they have a medical reason not to be vaccinated. Women who are planning pregnancy, are in the immediate postpartum, or are breastfeeding can be vaccinated with any vaccine, depending on their age and clinical risk group. All the vaccines are subject to rigorous testing before they can be given to the public. There is no evidence to suggest the vaccines can cause problems with fertility. The British Fertility Society (BFS) and Association of Reproductive and Clinical Scientists (ARCS) say there is absolutely no evidence, and no theoretical reason, that any of the vaccines can affect the fertility of women or men."
- Religious beliefs: The DHSC has confirmed that there will be no exemption for staff who object to vaccination on religious grounds.

Is anyone else exempt?

- friends and family of residents who are visiting;
- those entering to assist with an emergency or carrying out urgent maintenance work;
- those under the age of 18; and
- people who only work in the outdoor surrounding grounds of care home premises.

What about staff who refuse the vaccine due to religious beliefs?

At present, the Government has said people will not be exempt because of religious beliefs due to the difficulty in implementation, reducing the impact of the policy and creating tension between staff. It is possible that this will be an area of challenge.

When does it come into effect?

A precise date is not yet clear, as the Government will need to pass new legislation to bring the proposal into effect. It is our understanding that the intention is for the Regulations to be approved by Parliament before 23 July and for there to then be a 16-week grace period with the requirement going live at the end of October/early November 2021.

This means you need to start consulting with staff who haven't been vaccinated as soon as possible to ensure there is sufficient time for them to reconsider their options, and for you to follow a fair dismissal process and give notice before the end of the 16-week grace period. If you don't start soon you may end up paying staff in lieu of notice at significant additional cost to the business. However, don't jump the gun and dismiss too early as that could give rise to an unfair dismissal claim.

Can we start asking anyone we interview questions around this now?

It will be a legal requirement for all employees/workers/professionals entering a CQC regulated care home to be vaccinated. Asking about someone's vaccination status is necessary. However, there is a general prohibition on asking about the health of applicants for employment under s.60 Equality Act 2010 prior to an offer being made. We await further government guidance and recommend legal advice is taken on this point.

Where a staff member is not exempt but still refuses a vaccine, do they have employment law rights if dismissed?

Any employee with over 2 years' service has the right to bring a claim for unfair dismissal at the Employment Tribunal. The employer will be able to show a fair reason for dismissal under section 98(2)(d) Employment Rights Act 1996, as it will be implementing a legal requirement for staff to be vaccinated, but will still need to show that it acted reasonably in dismissing, considered redeployment and followed a fair process.

Whose responsibility is it to check that any agency staff are vaccinated and who keeps the records?

The Government proposal indicate that it would be the Registered Manager's responsibility and that enforcement would be through CQC.

They must be able to demonstrate to CQC that:

- there is a record of vaccination status and checking. This record must be kept securely in compliance with the Data Protection Act 2018
- the eligibility for vaccination of workers is regularly reviewed

Can a person start work either with only one vaccine dose or with vaccine dates planned?

Two doses of the vaccine are required before starting or entering a care home. There is a 16-week grace period for existing staff who are not vaccinated.

Keep informed

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