

# Making vaccination a condition of deployment in the health and wider social care sector

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Prepared by NHS Employers



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# About

Enclosed is our response to the Department of Health and Social Care's consultation on whether or not to extend vaccination requirements to other health and care settings for COVID-19 and also for flu.

The NHS Confederation is the membership body that brings together and speaks on behalf of organisations that plan, commission and provide NHS services in England, Northern Ireland and Wales. We represent hospitals, community and mental health providers, ambulance trusts, primary care networks, clinical commissioning groups and integrated care systems.

In England, our members include acute, mental health, community and ambulance NHS trusts; independent and voluntary sector providers; primary care networks and primary care federations; integrated care systems and clinical commissioning groups.

We also run NHS Employers, which supports the health service in its role as the nation's largest employer. We host the NHS Race and Health Observatory, which is working to tackle ethnic inequalities in health and care. We also host the NHS European Office, which is the conduit for the NHS to engage with the European Union.

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# Contents

About	2
Vaccinations for those deployed who undertake direct treatment	4
Vaccinations for those deployed who do not undertake direct treatment	9
Those outside of scope of policy and in other settings	11
Vaccinations for those under 18	13
Reasons for exemptions	15
Vaccinations for those with protected characteristics	16
Conflicts of a vaccination requirement policy	19
Encouraging those working in unregulated roles to be vaccinated	21
Further comments	23

# Vaccinations for those deployed who undertake direct treatment

Which of the following best describes your opinion of the requirement: Those deployed to undertake direct treatment or personal care as part of a CQC regulated activity in a healthcare or social care setting (including in someone’s home) must have a COVID-19 and flu vaccination?

<b>Must have a COVID-19 vaccination in healthcare</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know
<b>Must have a COVID-19 vaccination in social care</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know
<b>Must have a Flu vaccination in healthcare</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know

<b>Must have a Flu vaccination in social care</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	<b>Not supportive</b>	I don't know
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Please provide details to support your answer for each setting/vaccination (max 500 words each).

### A) COVID/healthcare

This is a complex issue, and leaders in the NHS have shared a variety of views which both support and raise concern. The majority on balance are in favour of the policy for COVID-19 vaccination, however there are still serious concerns on the impact that mandating could have on staff morale, recruitment and retention, especially through this winter period.

The advantages of a mandatory approach need to be balanced against the potential risk of a reduction in people available to work, increased turnover and a reduced ability to recruit.

**Workforce impact:** members are already experiencing considerable workforce challenges with staff who are tired and dissatisfied after the effects of the last 18 months and this policy risks exacerbating existing workforce shortages.

We have captured views from members in network meetings and through a short survey of workforce directors in the NHS. In the survey, 97 per cent responded that mandating the COVID-19 vaccine leaves them at risk of losing staff or having to redeploy staff into non-patient facing roles.

These concerns have already been illustrated in social care and NHS community delivery. One system shared that due to the mandatory vaccination they have employed over 100 staff from social care (10 per cent of their social care workforce) into the NHS as a temporary measure.

The re-deployment options become more limited with any expansion of the policy.

**Complex policy and administrative requirements:** should the decision be to proceed, it is likely we will see the dismissal of some individuals from their current employment. It is critical that employers have the time to manage any implementation with the due care and attention required.

To implement and administer the policy will require significant management time and this should be factored into any implementation timetable. Employers, working with local TU representatives will need to identify and facilitate redeployment processes, manage occupation health referrals and potential dismissals as well as respond to any challenges and discrimination claims.

**Overseas recruitment and differences in vaccination programmes:** the NHS continues to recruit from outside the UK. Many countries from which the NHS regularly recruit from are not on the UK's approved vaccine programme list which will likely impact the UK's ability to recruit doctors, nurses and other healthcare professionals from overseas.

Further risks include reduction in staff morale, increased costs to recruit new staff or find short term cover and triggering avoidable early retirement in some of our most experienced staff.

For all the reasons outlined above, should the decision be to mandate, the implementation date should be delayed until at least September 2022.

A delayed implementation would allow members to continue to support, educate and address concerns of vaccine hesitant staff, alleviate administrative burden of implementation and potential loss of staff over the winter period as well as allow scientific advice on any future vaccinations to progress.

Employers should continue to use alternative approaches to encourage and support staff who have concerns alongside excellent infection control processes until implementation.

## B) COVID/social care

The concerns highlighted above for COVID-19 vaccination in a healthcare setting all apply here too.

Members have shared that the introduction of the mandatory vaccination has already had an impact on recruitment and retention in both social care and NHS community delivery. Despite best efforts to encourage vaccination, mandating the vaccine in care home settings has not resulted in all staff choosing to have it. As well as the example noted in the section above, another member has reported that 20 per cent of their social care workforce need to be redeployed or will face losing their employment.

NHS organisations impacted by the previous changes in care homes have experienced difficulty in finding suitable alternative employment for staff, and therefore risk losing experienced qualified staff who are not easily replaced, for example, community nursing.

The reality for many social care providers is high numbers of care worker vacancies and the extremely competitive labour market. Despite efforts to attract people into social care, the current climate makes it more difficult to recruit and there are plenty of alternative employment options in other sectors. These issues should be taken

into account when assessing the risks of either proceeding or not proceeding with mandating the vaccine.

### C) Flu/healthcare

The NHS Confederation is not supportive of making flu vaccination a condition of deployment at this time.

The concerns raised for COVID-19 vaccination all apply here too, however given that flu vaccination rates are lower than COVID-19 (in some places this is much lower), there is a greater risk for workforce impacts to be seen and a bigger loss of staff from the system.

In addition, there are concerns that the flu vaccination does not have the same level of clinical rationale for mandating as the efficacy of the flu vaccine is limited. Reports of supply difficulties for the flu vaccines also questions whether the implementation of mandating flu vaccination would be possible.

Members have made great progress over the years to increase flu vaccine uptake through promotion, engagement and encouragement. This approach should be continued in the immediate term.

### D) Flu/social care

All concerns raised above for the Flu/healthcare and COVID-19 sections apply.

Flu vaccination rates in social care are significantly lower than those seen in NHS and therefore mandating vaccination has a significant risk to see an exodus of staff from social care, leaving the sector in a staffing crisis.



# Vaccinations for those deployed who do not undertake direct treatment

Do you think there are people deployed in or visiting a healthcare or social care setting (including someone's home) who do not undertake direct treatment or personal care as part of a CQC regulated activity but should also be included within the scope of a requirement to have a COVID-19 and flu vaccine?

Yes/ No/ **I don't know**

This is a complex question with strong arguments for both for and against. The COVID-19 pandemic has challenged previously defined definitions of front line and corporate/office staff.

People in all roles have been required to support and enable front line delivery in a variety of ways and there is concern that a two-tier

approach may not support the practical operation of services which require increased flexibility.

It is also difficult to communicate a clear rationale to staff as to why those who do not undertake direct treatment or personal care as part of a CQC regulated activity but still have contact with patients and other staff do not require vaccination.

However, including additional roles into the scope of policy will reduce the list of potential roles for which staff who are not vaccinated can be redeployed into. This will increase the likelihood of more people being dismissed from employment in a system with workforce shortages.

Members have asked for clarity on the scope as this is critical to effective implementation.

# Those outside of scope of policy and in other settings

For COVID-19 and flu vaccination, are there people deployed to undertake direct treatment or personal care as part of a CQC regulated activity that should not be in scope of the policy?

For COVID vaccination - Yes/ **No**/ I don't know

Most employers would support a policy which provided clarity that anyone delivering direct personal care should be vaccinated, unless medically exempt. They do not support a timetable which asks for this to be implemented before September 2022.

For Flu vaccination - **Yes**/ No/ I don't know:

We do not support mandating of the flu vaccination.

Are there any other health and social care settings where an approach similar to adult care homes should be taken? (that is, all those working or volunteering in the care home must have a COVID-19 vaccination or have an exemption)

Yes/ **No**/ No opinion

Any policy decision must be workable and pragmatic to those required to implement it, and using learning on the impact from care home settings to date. The range of settings where the delivery of healthcare takes place is vast – and there are many people flow in and out of each environment on a daily basis.

The safety of patients and our staff is paramount and needs to be underpinned by administratively light processes.

# Vaccinations for those under 18

Which of the following best describes your opinion of the requirement: Those under the age of 18, undertaking direct treatment or personal care as part of a CQC regulated activity (in a healthcare or social care setting, including in someone’s home), must have a COVID-19 and flu vaccination?

<b>Must have a COVID-19 vaccination in healthcare</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know
<b>Must have a COVID-19 vaccination in social care</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know
<b>Must have a Flu vaccination in healthcare</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know
<b>Must have a Flu vaccination in social care</b>	Supportive	Slightly supportive	Neither	Slightly unsupportive	Not supportive	I don't know

Please provide details to support your answer for each setting/vaccination (max 500 words each).

- a COVID/healthcare - No difference to 18+ year olds – see question 1
  
- b COVID/social care – No difference to 18+ year olds – see question 1
  
- c Flu/healthcare – No difference to 18+ year olds – see question 1
  
- d Flu/social care – No difference to 18+ year olds – see question 1

# Reasons for exemptions

Do you agree or disagree that exemption from COVID-19 vaccination and flu vaccination should only be based on medical grounds?

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<b>COVID-19 vaccination</b>	Strongly agree	Agree	Neither	Somewhat disagree	Strongly disagree	I don't know
<b>Flu vaccination</b>	Strongly agree	Agree	Neither	Somewhat disagree	Strongly disagree	I don't know

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# Vaccinations for those with protected characteristics

Are there particular groups of people, such as those with protected characteristics, who would particularly benefit from COVID-19 vaccination and flu vaccination being a condition of deployment in healthcare and social care?

**Yes**/No/Not sure

If yes, which particular groups might be positively impacted and why? (maximum 500 words)

We have no further information to add beyond what is already included in the consultation and equality duty analysis.



Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by COVID-19 and flu vaccination being a condition of deployment in healthcare and social care?

Yes/No/Not sure

If yes, which particular groups might be negatively impacted and why? (maximum 500 words)

The public sector equality duty analysis does not address the impact on staff groups who may continue to choose to not get vaccinated.

Staff groups where vaccine uptake is lower (i.e. young women, pregnant women and those from a BAME background) are at greater risk of redeployment or loss of employment and therefore could be disproportionately affected by this policy.

This could result in an increase of discrimination claims and challenges from staff.

There are also reports of vaccine hesitancy amongst some religious communities, and religious or moral objections to the vaccine may amount to protected religious or philosophical beliefs.

A mandatory approach could also undermine the relationships built locally where employers have adopted an inclusive approach to educate, support and encourage people to be vaccinated.

Staff from overseas may also be negatively impacted by this policy. Not all vaccinations or countries are on the UK approved list which will impact their ability to work in the health and social care sector in the UK.

The above points lead to a significant risk that this policy will act as a barrier to recruiting BAME and overseas colleagues into the health and social care sector as well as potentially losing existing staff from the sector.

# Conflicts of a vaccination requirement policy

Do you think a vaccination requirement policy could cause any conflict with other statutory requirements that healthcare or social care providers must meet?

Yes/No/I don't know/Not applicable

If yes, please give further detail on other statutory requirements that a vaccination requirement policy could conflict with (maximum 500 words).

There are potential legal risks which we would like to highlight to ensure they are given due consideration in the decision process:

- Human rights challenge
- Risk of personal injury claims

- Industrial action and Judicial Review

An equality assessment should consider the issues such as the risk of personal injury, the impact the policy may have on people with disabilities, people from certain ethnic groups, certain religious beliefs or women who are pregnant.

# Encouraging those working in unregulated roles to be vaccinated

What could the government do to encourage those working in unregulated roles to have the COVID-19 and flu vaccine? (maximum 500 words)

Regardless of the role an individual is employed to do, members have reported that the most successful way to encourage people to get vaccinated has been through education and promotion, offering staff who are hesitant and have concerns the space to discuss with another colleague or professional.

Members report national public health campaigns around safety can help, providing simple communications which include statistical information and facts about the benefits with an emphasis on protection of staff and patients and reduction of scale of infection alongside personal stories of support for the vaccination from a range of people who our staff can identify with.

Providing the ability for employers and their managers to continue having 1:1 conversations that help answer specific concerns raised by staff would be helpful. With staff under immense pressure,

ensuring the impact data of any policy change and timeframes are central to the decision-making process – as outlined previously, employers do not support the mandation of the flu vaccine and any decision to mandate the COVID-19 vaccine should not be imposed until at least September 2022.

# Further comments

We welcome any further comments you may have relating to this consultation (maximum 500 words)

The consultation highlights that staff would be required to have a 'completed course' of COVID-19 vaccination which currently is two doses, however that this could potentially be extended to include a booster following guidance. It is uncertain whether these goals will continue to change (i.e. annual vaccination) which make implementation much more complicated. It is also unknown how the general public and health and social care staff would respond to the requirement of additional vaccination. Clarity is required on what the boundaries for this policy are.

Further clarity and guidance will be required on how members will be expected to record and hold data on vaccination status. Members have shared concerns over GDPR and data inconsistencies which has not allowed us to gauge a full understanding of the impact this policy could lead to.

The consultation is silent on agency, locums and students and who will be responsible for ensuring they have been vaccinated and therefore able to be deployed in NHS and social care settings. Clear definitions and guidance will be required to ensure that employers can implement any potential policy effectively with minimal bureaucracy and administrative burden.

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