

Revoking vaccination as a condition of deployment across all health and social care

Consultation response

February 2022

Prepared by NHS Employers

About

Enclosed is our response to the DHSC consultation on revoking vaccination as a condition of deployment across all health and social care.

The NHS Confederation is the membership organisation that brings together, supports and speaks for the whole healthcare system in England, Wales and Northern Ireland. The members we represent employ 1.5 million staff, care for more than 1 million patients a day and control £150 billion of public expenditure. We promote collaboration and partnership working as the key to improving population health, delivering high-quality care and reducing health inequalities.

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.

Contents

About	2
Key messages	4
Question 1	6
Question 2	8
Question 3	9
Question 4	12
Question 5	13

Key messages

In addition to the answers to the consultation questions, the following key messages have been raised by our members as important points for the government to consider as part of the process:

- The way in which the decision to pause the VCOD processes was made and communicated to employers and their people generated a significant amount of ill-feeling. The poor communication and late U turn further damaged trust between team members, individuals and their employer and the system, following what was already an emotionally charged and divisive policy decision.
- We welcome the opportunity to comment on this short consultation and would strongly recommend that the way in which the outcome is communicated does not replicate the errors mentioned above. In particular, staff should learn the outcome directly rather than hearing about it through the national media.
- Employers are now seeking certainty and clarity on the future of this policy including ensuring that employers are not required to introduce mandatory vaccination as a condition of future employment. If the decision to revoke the regulation is informed by reviewing clinical evidence and making a risk-based decision that it is not required, we cannot see how making vaccination a condition of future recruitment aligns with this position. Only an outcome that clarifies that it won't be a future requirement will avoid further anxiety and dissatisfaction among our staff.

- Making vaccination a condition of future recruitment would also create inconsistency of application and would not support the Integrated Care System aims to enable organisations to passport staff between organisations when needs require.
- We understand that the consultation states that both Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as inserted by the [Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) Regulations 2021](#) and the [Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) \(No.2\) Regulations 2022](#)) depending on the outcome of the consultation would be revoked. However, there are some concerns among our employers that different decisions may be made. We would expect that any decision to revoke the legislation is made for both health and all social care settings, as to have different outcomes for health and social care would be detrimental to both staff and patients.
- We request that information including timescales and what will be included in the scope of the consultation is provided as soon as possible on the separate consultation on updating the Code of Practice for regulated providers to strengthen requirements in relation to COVID-19. We specifically request that it is clarified that it will not seek for there to be a condition of future employment for new starters to be vaccinated. Not clarifying this would lead to further anxiety amongst staff. We also request a longer timescale for consultation to enable representing organisations like the NHS Confederation to engage fully with their stakeholders and get an informed position.
- The consultation document states that since the launch of the September 2021 consultation, there has been a net increase of 134,000 people in NHS Trusts who have received their first dose. Employers have supported and encouraged employees to have the vaccination and will continue to do so. This is in line with the response from regulators to encourage professionals to be vaccinated.

Question 1

It is a statutory requirement that CQC-registered persons only permit those individuals who are vaccinated against COVID-19, unless otherwise exempt:

- to be deployed for the provision of a CQC-regulated activity in health and/or social care
- to enter CQC-registered care home premises.

Which of the following best describes your preference for this requirement?

- I feel strongly that the requirement should be revoked
- I would prefer that the requirement is revoked
- I don't mind either way
- I would prefer that the requirement is not revoked
- I feel strongly that the requirement should not be revoked
- I don't know

Rationale

In our previous consultation response, we reflected a variety of views raised by workforce leaders which both supported the mandating of VCOD, but also raised concerns. Serious concerns were raised on the negative impact that mandating could have on staff morale, recruitment and retention, increased turnover and a reduced ability to recruit, all of which played out in the run-up to the act being reviewed. Workforce leaders are now asking for time, space with a period of certainty to allow for relationships and trust to be mended.

Question 2

Thinking about yourself, your colleagues, your staff or care providers who are hesitant to get vaccinated, do you believe there are other steps (other than those set out in the original consultation) the government and the health and care sector could take to increase vaccine uptake?

- Yes
- No
- I don't know

If yes, what specific actions do you believe government and the health and social care sector should be taking to further increase vaccine uptake?

We recommend that national bodies hold further webinars/open forums for vaccine hesitant individuals to be able to discuss their concerns with informed individuals. In health and care settings we would want to continue to have open dialogue with those who are vaccine-hesitant.

Question 3

Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by a COVID-19 vaccination not 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?

Data demonstrates that there is [lower vaccination uptake in some BME groups](#).

However, information in the consultation document demonstrates the decreased risk of the Omicron variant:

While Omicron still presents a threat to public health, especially for those that are unvaccinated, relative to Delta, it is intrinsically less severe. There is emerging evidence that Omicron may have lower virulence due to:

- a preference to replicate in a different part of the respiratory system
- a different cell entry mechanism compared to previous variants.

This has resulted in the risk of presentation to emergency care or hospital admission with Omicron being approximately half of that for Delta. When coupled with the high vaccination rate in the population, this has meant the impact of the circulation of Omicron has been less than initially feared.

Also, the evidence demonstrates the increase in uptake of the vaccination in the general population and the health and care workforce:

Data collected for the NHS shows that over 1.45 million (95%) NHS trust staff have received at least one dose, with 1.4 million (92%) staff having received two doses. The percentage of staff receiving a first dose is above 96% in all regions (two doses above 90%), bar London, which is at 92% for first dose (87%, two doses). Over 1.17 million (77%) have received a booster. All data as of 3 February 2022, covering vaccinations up to 30 January 2022.

The fantastic efforts of the NHS and all the volunteers that stepped forward to help have played a vital part in raising our wall of protection even higher, keeping all of us safer. As of 1 February 2022, over 84% of England's population aged 12 and over have received two doses of the vaccine, while 64.6% have received their third dose or booster.

As of 30 January 2022, 96% of all care home residents have received two doses of the vaccine and 87% have received a booster.

In the general population, 92% of adults aged 80 and over have received two doses of the vaccine and 88% have received their third dose or booster.

Of those identified as clinically extremely vulnerable, 94% have received two doses of the vaccine and 85% have received their third dose or booster.

Therefore, if health and care settings ensure they are following current infection and prevention control policy and practices, have regular testing of both staff and patients and continue to promote the benefits of having the vaccinations and boosters this would reduce the risk to those with protected characteristics, who would be particularly negatively affected by a COVID-19 vaccination not being a condition of deployment in healthcare and social care.

There is a positive outcome that with the proper infection and protection control measures in place, those staff who are unvaccinated can remain in employment. However, employers will continue to promote uptake of the vaccination to ensure all current and future staff protect themselves in the best way possible

Question 4

Are there particular groups of people, such as those with protected characteristics, who would particularly benefit from a COVID-19 vaccination not 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?

Data demonstrates that there is lower vaccination uptake in some BME groups.

Therefore, if COVID-19 vaccinations was mandated and made a condition of deployment in healthcare and social care settings, this would have a detrimental impact on these groups. The People Plan is committed to diversifying the NHS workforce and this would impact on this commitment.

Question 5

What actions can the government and the health and social care sectors take to protect those with protected characteristics, or the groups you've identified, if COVID-19 vaccination is not a condition of deployment?

- We ask that the government commits to continue to provide free COVID-19 tests for key workers, including health and care staff.

Healthcare providers to:

- comply with current infection and protection control policy and practices
- continue and promote regular testing of staff and patients
- continue to educate and promote the benefits of the vaccination and boosters
- allow time and space for those who are vaccine hesitant to raise questions and discuss their concerns with experts in the field.

18 Smith Square
Westminster
London SW1P 3HZ

020 7799 6666
www.nhsconfed.org
@NHSConfed

If you require this publication in an alternative format,
please email enquiries@nhsconfed.org

© NHS Confederation 2022. You may copy or distribute this work,
but you must give the author credit, you may not use it for commercial
purposes, and you may not alter, transform or build upon this work.

Registered charity no. 1090329

