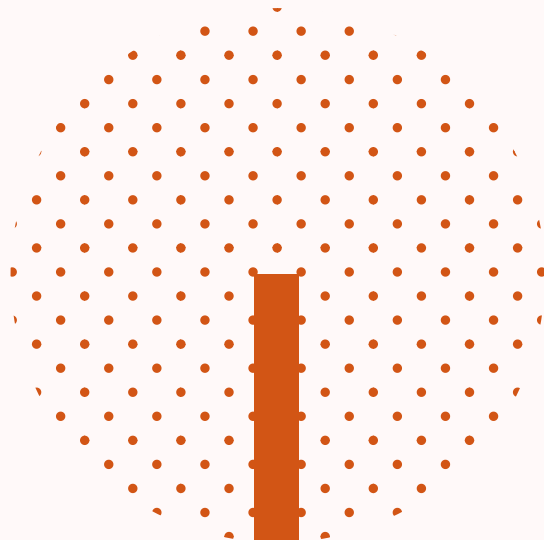




# BRIEFING

COVID-19 VACCINATIONS



# COVID-19 VACCINATIONS



Uptake of the COVID-19 vaccine is currently optional, as is the uptake of all other vaccines in the UK, but it is strongly encouraged amongst frontline health and social care staff.

In considering these policy changes, Ministers must comply with the equality legislation, including the Public Sector Equality Duty (PSED) under Section 149 of the Equality Act 2010, their general duties under the National Health Service Act 2006, which are included in Sections 1 to 1G, and the Family Test.

The following questions have been raised by members and we hope the responses outlined in this briefing, which have been drafted after taking legal advice, provide some clarity. These recommendations are by no means exhaustive nor conclusive as the details of the legalisation currently are very high level.

**Disclaimer:** The Association does not provide legal or financial advice and providers must seek this themselves. We will provide members with updates based on official Government guidance as and when we have greater clarity.

**Q** How can employers be making changes to terms and conditions of employment of current staff? Will there be a different approach for those on a zero-hour contract versus full time staff?

The outcome of the consultation plus a few points from the supporting documents have been published [here](#). Please revisit this page on a regular basis as the details are changing frequently.

Providers must make changes to contracts of employment terms and conditions via consultation and then change with staff. Providers will have to consult with staff members individually.

Change affects Health and Safety (H&S) representatives and as this is a major change to terms it is reasonable for staff and the employer to be expected to consult with the elected representative for H&S (lead) in the organisation.

Some staff may decide to take the vaccination to avoid losing their jobs. In the interests of employee relations it is suggested that employers harness the power of the majority.

While we await the outcome of the next consultation, providers should continue consulting with staff around any hesitancy and engage directly with employee representatives if you have them.

You can develop a vaccination policy which can be added to the organisation and therefore can be contractual.

# COVID-19 VACCINATIONS



This change will make most difference to those that are vaccine hesitant (approx. 20% of the total social care workforce).

T&Cs can be started at the point of new contract for any new staff that are recent joiners.

Zero-hour workers directly contracted will require changes to their contract.

Bank staff contact issued at point of deployment - overarching agreement for zero hours models.

Agency staff will also need to be employed on the basis of vaccination status.

Risk assessment for service safety:

Consider whether you can undertake the contractual obligations of public procurement with unsafe staffing levels, particularly the lack of staff available to recruit to roles. Providers may have to consider contract hand-backs.



Medical exemption – is this at the discretion of the individual's GP?

A medical diagnosis would be made via the clinician (GP) and therefore meets the exemption.

Vaccination is mandatory for everyone; medical exemptions can be found in the [Green Book list](#).

Health condition exemptions can be complex. It is for the employer to ask for verification and potentially be challenged under the Disability Discrimination Act.

The Equality Act 2010 makes it unlawful for employers to ask about an applicant's health or disability before they have been offered the job, or before including them in a pool of successful candidates to be offered a role later, except in specified situations.

If someone became long term sick, there could be a claim against the employer. The addition of mandatory vaccination as a condition of employment could therefore be considered as causing an adverse event.

The NHS app does not list exemptions. It is anonymous and evidence will be required.



**Q** Do pregnant staff members have to be vaccinated?

Yes, pregnancy is not on the exemption list.

**Q** What could be the legal position if a staff member refused vaccination and cited protected characteristics? Does this impact more widely on protected characteristics?

There will be a legitimate business case for the vaccination usage. This means the law that will be passed, and it needs to be implemented in a proportionate way.

If you have an evidence base as to all the decisions taken as an employer, you can defend any claim and provide yourself with a good base for a claim under the Equalities Act. There is no government support to the sector on this.

Redeployment is not likely to be an option for many members and you could face unfair dismissal cases as a result. A fair policy implementation would need to be undertaken including a disciplinary process, hearing and dismissal. Staff are also able to take the 12-week notice period. Our advice is to consult with staff at the earliest point.

Staff were not consulted within the original consultation for residential care providers supporting the under-65 age category. There is an issue here around the widescale approach being applied by the Government; this could be open to a judicial review.

**Q** Is this linked with indemnity for the provider if the NHS immunise staff, therefore not an employer liability?

This is an NHS issue due to the administration (and an adverse event occurring). The assessment of the impact on the liability insurance needs to be clarified – we recommend speaking with your insurance provider.

**Q** What could be the impact on the employer liability insurance if this legislation is passed and you do not have vaccinated staff?

Medical exemption would be deemed as compliant, and the insurance position would be taken on an individual basis. This lacks clarity.

Members are not likely to be covered if they do not have any Covid-19 public liability cover. Please speak with your insurance provider for clarity.



Who will be required to be vaccinated to come into a care home?

Everyone - for example, hairdressers, NHS staff, delivery drivers, maintenance contractors, and all other services.

Review the overarching contracts that you hold with these people and collate into a list and then work to amend each one to reflect your new contractual requirements.

Excluded: Urgent maintenance works staff.



Is it lawful for non-employed individuals to be asked about their vaccination status by the organisation – for example tradesmen or NHS staff visiting the registered service?

This requires further clarification.

Most of the regulation and inspection will be via the CQC, and inspectors must also be vaccinated.



New starters - how will this work if a new starter has not received their vaccine and they need to have completed both doses of the vaccine which takes between 8-12 weeks?

Deployment is the criteria so you could keep someone on garden leave until both vaccines taken.



Do we have until January 2022 to get everyone vaccinated or will it be 16 weeks from when the legislation potentially gets signed off as regulation in July 2021?

This is an amendment to secondary legislation. The [legislation](#) has been laid in Parliament; the aim is for this to be debated and passed before the summer recess from 23rd July 2021.

There's some confusion as to whether or not the 16-week grace period is from October 2021, which would then mean the implementation starts from August 2021 and then runs for 16 weeks. (end date late Oct/Nov).

Currently we believe the likelihood will be for the legislation to be introduced in stages due to the breadth of the scope being consulted on. The next consultation will be on non-care home settings and NHS staff and is expected to start in the next two weeks.