

## Compulsory Vaccination in Care Homes Guide

Advice on the employment law implications  
of mandatory vaccination for care home workers

worknest

# Vaccinations



## Introduction

Throughout the coronavirus (COVID-19) pandemic, care homes have been hit particularly badly in terms of illness and deaths, primarily due to the vulnerability of the service users within them. In an attempt to reduce the risk to care homes posed by COVID-19, the government has introduced legislation that makes it compulsory in England for anyone entering a care home setting (subject to a few exceptions) to be fully vaccinated.

This guidance note sets out the main points to consider from an employment law perspective. For detailed guidance, please refer to the government's [operational guidance](#).

## What's changing?

As mentioned in the introduction, the government has introduced the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 ('the Regulations') which effectively means that anyone entering a care home in England (subject to exceptions) has to provide evidence to a registered person that they have been fully vaccinated with an approved vaccine or deemed medically exempt.

## When does this come into force?

This requirement came into force on **11 November 2021**.

## Who does this apply to?

The Regulations place an obligation on CQC-registered service providers (or registered managers) of accommodation for those who require nursing or personal care in a care home to ensure that a person does not enter the premises unless that person has provided evidence that they have been fully vaccinated or are medically exempt from being vaccinated. Under 18s are also exempt but must be fully vaccinated by their 18th birthday to enter a care home (subject to medical exemption). There are other exceptions that should be noted but are less relevant from an employment law perspective. See [here](#) for further details.

The CQC-registered person can delegate the task of checking status, but they will ultimately remain liable under the Regulations. There is guidance for registered persons, [here](#).

Note that this does not appear to include Children's Homes, hospitals, or domiciliary care. You should contact CQC if you are in any doubt as to whether these new Regulations apply to you.

## What about visiting professional service providers?

The Regulations also apply to professionals entering a care home, for example visiting healthcare professionals, social care workers, and non-care services such as hairdressers and maintenance staff.

If you employ someone who provides services to a care home covered by the Regulations, then it will be necessary to review their vaccine status to assess whether they can continue to do their role.

Note that 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.

## How does someone prove their vaccination or health exemption status?

### Proving vaccination status

This will depend on where you have been vaccinated:

- If you were vaccinated in England, then you can only rely on the NHS App, NHS website, or NHS letter as proof of vaccination. See [here](#) for details.
- If you were vaccinated in Scotland or Wales, information can be found [here](#) and [here](#) respectively.
- If you were vaccinated abroad, the position remains unclear at present. The guidance states: *In the meantime, individuals can self-certify as medically exempt if they are vaccinated abroad by following the guidance on [temporary medical exemptions for COVID-19 vaccination of people working or deployed in care homes](#). The formal medical exemptions process currently does not apply to individuals vaccinated abroad. Self-certification for medical exemptions will continue for this group and until further notice. The exemption will not expire 12 weeks after the NHS COVID Pass system is launched.*

### Proving medical exemption status

As for proving medical exemption from vaccination, it will be necessary to do this through the NHS COVID Pass process (save for pregnant employees – see below). Details of this can be found [here](#) and [here](#). In addition, it is currently possible, for a short period, for employees to self-certify that they are medically exempt from vaccination – see [here](#). This self-certificate will last until and including 31 March 2021, from which point the employee will have to obtain an official exemption certificate through the NHS COVID Pass process or get fully vaccinated in order to enter the care home. It's important to note from the above guidance that the process for obtaining medical exemption status might take several weeks, particularly given current pressures being placed on the NHS. Therefore, employees should be encouraged to start that process as soon as possible in order to avoid issues.

The medical reasons for exemption are quite limited (please see the guidance linked above).

There is a template self-certification certificate on the government website for employees to use and sign if they are self-certifying, [here](#). This sets out all the relevant information, as well as an acknowledgment that if they are providing false information, they may be subject to disciplinary action. It's advisable that any employee who is self-certifying does so using this form, although the CQC has stated that other self-certification forms can be accepted. If you are presented with a form other than those provided on the government's website, the CQC should be contacted to ensure that it is compliant.

Pregnant employees can choose to exempt themselves from being vaccinated if they wish. In order to evidence this, they just need to provide their MAT B1 form. This will expire 16 weeks postpartum, at which point the employee will have to obtain an official exemption certificate through the NHS COVID Pass process or get fully vaccinated in order to enter the care home.

## Who will enforce this?

CQC will enforce this under the current powers of inspection and enforcement.

## How should we prepare?

There is some useful information in the operational guidance regarding good employment practice, [here](#).

In essence, the following steps should be taken to prepare for this new obligation:

- Inform staff who will be required to provide evidence of vaccination or medical exemption of this requirement as soon as possible in order that they are able to get evidence in place. This will also include providing information about the vaccine itself, along with its benefits, and inviting them to speak to someone if they have any concerns or questions. The timeframe in which affected individuals, including employees, should get vaccinated is set out in the guidance – given the minimum interval between each dose is currently eight weeks, the last date to receive the first dose was 16 September in order to meet the 11 November deadline. Therefore, it will be important to discuss matters with employees as soon as possible.
- There is a government vaccine toolkit available online with posters and information for individuals, [here](#).
- If a recognised Trade Union or employee representative group are in place, consult with them about the incoming obligations since this is likely to amount to a health and safety measure on which consultation is required, although in practice there may not be much to consult on given that employers will not have any choice but to comply with these measures.
- Update any policies and procedures and discuss these with employees, including any vaccination and data protection policies where necessary. This will also require care homes to consider how they will go about recording the required information on each occasion.

The key to this is early engagement with staff, giving them the opportunity to discuss any concerns with appropriate managers, and flagging to employees what the consequences of non-compliance will be. Encouraging employees to be vaccinated if they can by providing relevant information will assist greatly in this, particularly for those who are vaccine hesitant.

**While the 11 November 2021 deadline has now passed, if you have not yet started to address this issue, it will be imperative that you start now, following the guidance above.**

## How should we deal with employees who refuse?

There are a couple of scenarios that may arise prior to the new obligations coming into force:

### Employees stating that they are medically exempt from vaccination

In this instance, the employee will have to provide evidence of this. As noted above, this can be done either through the NHS COVID Pass process or via self-certification (until and including 24 December 2021). It will be important to check the operational guidance regularly for any updates in this regard.

A risk assessment should be carried out in respect of this employee's work to see if it is still safe for them to carry out their role, perhaps with additional safeguards in place. If it is, then that is fine. If it is not possible for them to continue in their current role, even with safeguards, then it will be necessary for the employer to consider whether adjustments can be made to their role, or if there are other vacancies available.

Note that employees who are medically exempt are likely to be disabled under the Equality Act 2010, so there is a positive duty on employers to consider reasonable adjustments. If there are no adjustments or alternative roles, then it will be a case of considering dismissal, either on capability grounds or for some other substantial reason.

### Employees who are not medically exempt but are refusing to be vaccinated for other reasons

As mentioned, engagement is key. Employers should discuss employees' concerns and see if they can be alleviated. There is information in the operational guidance about the vaccine, [here](#), which may assist in encouraging employees to be vaccinated.

If they continue to refuse, then it will be necessary to consider whether there are alternative available roles they could undertake without the need to prove their vaccination status. If there is not, then you will be looking at dismissing the employee either on the ground that the employer is complying with a legal obligation or for some other substantial reason.

One question here will be at what point can an employer serve notice of termination of employment on an employee? This will depend on the circumstances of each case. For example, if you have an employee who is vaccine hesitant and there is evidence that they may change their mind, then even if they miss the 16 September date for getting the first dose, it may be reasonable to wait and see if they change their mind by 11 November.

If they do, they will not be able to attend the care home from 11 November until they have received both doses, in which case you could allow them to take unpaid or annual leave until that occurs.

This would also apply to individuals who may be experiencing practical issues in getting vaccinated.

However, if the employee is anti-vaccination and there is no indication that they will change their minds, then it may be reasonable to serve notice on or after 16 September.

## How much notice do we need to give?

In either case, employees will be entitled to their full statutory or contractual notice, whichever is greater, and a full and fair process must be followed before doing so. There will be a continuing duty to consider any alternatives to dismissal during the notice period.

If the employee's notice takes them beyond 11 November and they are not fully vaccinated or medically exempt, then you may either pay them in lieu for the remainder of their notice or keep them employed, where arguably they will not be entitled to pay for any period in which they are unable to carry out any work (although this may depend on the reason why they will not or cannot be vaccinated).

**We strongly recommend seeking advice before taking any action against employees. Please speak to your Employment Law Adviser or, if you are not yet a WorkNest client and would like specialist guidance, call 0345 226 8393 for support.**

**The information in this note is correct as at 20 December 2021. Please check government guidance for the most up-to-date position.**