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Making COVID-19 vaccination a condition of deployment for health care staff – RCM briefing

In November it was announced that individuals undertaking CQC regulated activities in England must be fully vaccinated against COVID-19 no later than 1 April 2022. Currently the regulations do not require evidence of boosters. Unvaccinated individuals will need to have had their first dose of an approved COVID-19 vaccine by 3 February 2022 in order to have received their second dose by the 31 March 2022 deadline - subject to the regulations parliamentary passage.

On 6 December 2021 NHS England and NHS Improvement published guidance for NHS providers. Although trade unions including the RCM were able to comment on an initial draft of the guidance through the Social Partnership Forum it is not joint guidance. NHS England and Improvement will publish further 'phase 2' guidance covering transition and formal steps to implement the regulations later.

NHS England and Improvement guidance can be accessed here: [C1470-vcod-for-healthcare-workers-planning-and-preparation-guidance.pdf \(england.nhs.uk\)](https://www.england.nhs.uk/media/13470/vcod-for-healthcare-workers-planning-and-preparation-guidance.pdf)

NHS resources for engaging and communicating with staff to increase vaccination uptake can be accessed here: [Coronavirus » Resources available for engaging and communicating with staff to increase vaccination uptake \(england.nhs.uk\)](https://www.england.nhs.uk/coronavirus/resources/engaging-and-communicating-with-staff-to-increase-vaccination-uptake/)

What the NMC says:

All registered Midwives, Nurses and Nursing associates, have a professional responsibility under the [NMC code](#) to preserve safety and to take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public or others. 20.4 keep to the laws of the country in which you are practising.

<https://www.nmc.org.uk/news/coronavirus/vaccines/>





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What the RCM is saying now:

- We are encouraging members to take up the vaccine as the best way to protect themselves
- Infection prevention measures such as regular lateral flow testing, PPE, sufficiently ventilated workplaces, cleaning regimes and hand hygiene etc should be in place regardless of vaccination status
- We encourage members who feel hesitant to take up the vaccine to access high quality evidence-based information to ensure that they make an informed decision based on the best available evidence.
- Midwives, MSWs and students on placement should be entitled to time off work with pay to be vaccinated or to obtain evidence of medical exemption. This should also include travel time to vaccination centres. Consideration should also be given to providing free transport to vaccination centres where on site vaccination isn't available.
- Staff who suffer side effects from vaccination should be entitled to full pay and any absences should not count towards sickness absence triggers.
- Line managers and others expected to have one to one conversations with staff should be given adequate, training, time and support. Staff should also have access to other sources of trusted support and information if they do not feel comfortable speaking to their manager.
- The RCM will support and represent members who are put through formal processes regarding vaccination, ensuring they are applied fairly and proportionately. We will also ensure our workplace representatives have access to any support and training they might need to carry out their role.
- Equality assessments should be completed to consider and understand the likely impact of the regulations on staff with protected characteristics. The results should be shared with trade unions and subject to joint





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monitoring and review process.

- Staff who are not vaccinated, will need to have risk assessments and may need to be redeployed to avoid exposing other staff and service to risk, undertake regular testing and have access to extra PPE. This will need to be discussed and agreed with the employer.

Who will the new rules apply to?

The new rules will apply to both the NHS and independent health sector, they will require workers (including those working through an agency and students on placement) aged 18 and over, who have direct, face to face contact with service users to provide evidence that they have received a complete course of COVID-19 vaccine, subject to limited exceptions.

This includes social contact with patients for examples receptionists, ward clerks, porters, and cleaners. Not included are those who do not have direct face to face contact with service users e.g. those providing care remotely, such as through triage or telephone consultations or those in managerial roles working on sites separate from patient areas. People on long term absence from work, such as maternity, shared parental leave or sickness absence, are not included until they return to having any face-to-face contact (which would include on one off visits such as Keeping in Touch (KIT) days).

Students who have not been vaccinated but are not exempt, will be directed to their educational provider to discuss the impact this will have on progression through their programme.

Who is exempt and can still be deployed despite not having been vaccinated:

- Those under the age of 18
- Those who are clinically exempt
- Those who have a short-term medical condition (which is an option that some pregnant women may choose to take; for pregnant women the exemption expires 16 weeks post-partum and so will allow them to become fully





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- vaccinated after birth). The RCM, the RCOG and the UK Tetralogy Service recommend the COVID-19 vaccination for pregnant and breastfeeding women
- Those who have taken part or are currently taking part in a clinical trial for a COVID-19 vaccine

The NHS COVID Pass can be used by those who have clinical exemptions. The pass will not show that someone has a clinical exemption. They will receive a confirmation letter which can be used to prove that they cannot get vaccinated. The letter will explain that the individual is medically unable to get vaccinated. Those who are exempt from the regulations as outlined above can still work in patient facing roles. The NHS England and Improvement guidance states that managers should take steps with regards to ensuring health and safety and infection prevention measure. It also states that those who are exempt should be referred to Occupational Health.

What evidence can be used to show vaccination status

- The NHS COVID pass, or equivalent from NHS Scotland, NHS Wales or the Department of Health in Northern Ireland; or
- The EU Digital COVID Certificate; or
- The Centres for Disease Control and Prevention vaccination card; or
- A certificate in English, French or Spanish issued by the competent health authority with information about the individual and the vaccine they received

What cannot be used as evidence to show vaccination status

- NHS appointment cards.

Those who were vaccinated abroad will be required to provide evidence of their vaccination status and, where necessary, have a top-up dose with a UK authorised vaccine consistent with the UK Health Security Agency (UKHSA) guidance on vaccines.





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What happens next?

NHS England and Improvement guidance includes a suggested action plan for employers to take (working with trade unions.

- Initiatives to increase local vaccine uptake such as staff engagement including one to one conversations (students should be included in engagement and communications to increase uptake)
- Build in support and training time for the managers responsible for working through the process.
- A specific COVID-19 vaccination policy / procedure.
- Review and assess which roles are likely to be in scope.

Subject to the timescales / deadlines mentioned above action plans are also suggested to include:

- Ask workers to confirm their vaccination status / intentions in writing and set deadlines.
- Engage in conversations with those who are vaccine hesitant at the earliest opportunity including conversations about the impact of that decision on their role and, if relevant, the limitations of redeployment into non-face-to-face roles/projects.
- Have a meeting with those who refuse or are exempt to confirm evidence required, assess risk and discuss next steps.
- Obtain evidence of vaccination status
- If it is unlikely that someone will be fully vaccinated by 1 April 2022 (and no exemption applies), undertake a formal process with the individual in line with the internal policy.





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- Plan and identify potential workforce reconfigurations and redesign, ahead of 1 April 2022.

Developing a vaccine policy – information for RCM Workplace Representatives

The NHS England and Improvement guidance suggests employers work through partnership forums to develop vaccine policies which might cover:

- The benefits of vaccination
- Whether staff over 18 are entitled to time off work (with or without pay) to be vaccinated or obtain evidence of medical exemption.
- Any arrangements relating to leave if staff experience side effects from vaccination. For example, it may be preferable to avoid a large number of staff being vaccinated on a single day.
- How an individual's vaccination status can be evidenced.
- How data about vaccination or exemption will be processed.
- How any formal policies will apply to staff who cannot comply with the requirement.
- How vaccination requirements of new recruits and agency staff will be addressed.
- Any equality issues that arise from complying with the regulations (see section on Equality Act 2010).

Equality assessments should be completed to consider and understand the likely impact of the regulations on staff with protected characteristics.

Redeployment

A national redeployment framework will be developed. The NHS England and Improvement guidance recommends that employers can refer to internal redeployment policies but should do so cautiously due to the exceptional circumstances and that they start to consider potential redeployment opportunities locally and across the ICS. The approach to redeployment should be agreed with staff-side.





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It outlines the below considerations:

- Extend the vaccination period – subject to the outcome of a risk assessment, staff may be redeployed on a temporary basis where possible if the first dose of the vaccine has been received and the second dose is scheduled after 1 April 2022.
- Staff who are temporarily redeployed during the extended vaccination period may be eligible for pay protection in accordance with an organisation's protection arrangements.
- Whether potential suitable alternative roles should be ring-fenced with consideration given to other staff who may be subject to redeployment for a reason unrelated to the regulations.
- Clear guidance should be in place regarding the redeployment process and how staff will be assessed as suitable for a role (focus on assessing transferable skills from the point of what staff can do as opposed to what they can't).
- A selection framework may be agreed for similar roles to ensure consistency of approach.
- If there are several potentially suitable redeployees, some form of competitive assessment will need to take place and should be made clear in advance and applied consistently.
- Consideration of equality principles in accordance with usual recruitment approach.
- Written feedback provided to the employee if they are not a suitable match for a vacancy, detailing clear justification as to why the redeployee has been unsuccessful. This feedback can support future job searches.





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- Whether a trial period will be offered for staff who are permanently redeployed to alternative roles.
- The extent to which training, and development will be available to support permanent redeployment if applicable.
- Permanent redeployment of employees will potentially impact upon their pay and pension.
- For clinical staff moving to a non-clinical role maintaining their professional registration will also be impacted.
- Staff are encouraged to seek advice from the NHS Business Services Authority (NHSBSA) and their professional governing body. If local redeployment is exhausted, managers should consider wider redeployment within other Trusts, local authority and ICS.

Background – the RCM’s response to the Government’s consultation

In October 2021 the RCM responded to the Government’s consultation on making vaccination for COVID and flu a condition of deployment for health and social care staff. See below overview of the RCM’s position.

The RCM does not support mandatory vaccination, not because of an objection to vaccination, we believe that all midwives and maternity support workers (MSWs) should get vaccinated against COVID-19 and the flu and we have strongly and repeatedly encouraged our members to do so.

We are concerned that a move to mandate vaccines will exacerbate existing staffing shortages among midwives and MSWs, at a time when many NHS trusts in England are struggling to maintain safe staffing levels. While only a small minority of staff have yet to be vaccinated for COVID-19, their removal from frontline care would increase the pressure on services that currently do not have sufficient flexibility to accommodate redeploying this group of staff.





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At the present time, many midwives who would normally be employed in non-patient facing roles are having to cover for vacant frontline posts, so the scope for finding roles for staff away from the frontline is extremely limited.

Given that vaccinations for both COVID-19 and flu do not provide complete protection against infection or prevent transmission and that staff who are medically exempt from vaccination will still be deployed on the frontline, we would question whether this policy provides as much protection for patients and staff as is being claimed. It is the RCM's position that a more pragmatic and effective approach would be to intensify efforts to encourage voluntary take-up of the vaccines, while at the same time testing staff who continue to decline vaccination.

