

Mandatory COVID-19 Regulations: Your Questions Answered



From 11 November, anyone working or volunteering in a care home will need to be fully vaccinated against COVID-19 unless exempt. Our legal experts, Napthens, answers some frequently asked questions.

Are these regulations really mandatory?

Yes, they are, as of 11 November 2021 it will become a legal requirement for all care home workers to be vaccinated against COVID-19 in accordance with the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 ("Regulations").

It applies to all CQC registered service providers or registered managers of accommodation for those who require nursing or personal care in a care home.

Do the regulations apply to the whole of the UK?

No, currently just England.

Why just care home workers?

For now, it is care home workers, but the Government has said it will consult further with other health and social care professionals.

But I've heard there are some exemptions?

Yes, there are some exemptions outlined by the Government. So, care home workers are not required to be vaccinated against COVID-19:

- If they are **medically exempt**; or
- If they are **under the age of 18**

Other people also need to show proof of their vaccination status or exemption too and these include:



All volunteers who enter the care residence



Anyone entering a care home for a job interview



Any new staff being recruited by the care home

For a full list read the **Government guidance** at <https://www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance>

Do care home residents have to be vaccinated?

Residents are exempt from vaccination. The same goes for friends or relatives of the resident and anyone visiting a resident who is dying or offering bereavement support.

However, additional steps should be considered for these visitors to protect the health and safety of staff and residents. These may include face coverings, maintaining social distancing, use of hand-gels/regular washing of hands and ventilation. These are matters for the care provider to decide.

I've been advised not to get the vaccine, what can I do?

There may be some care home workers who are advised not to get the COVID-19 vaccination due to having a clinical medical condition.

In this case, those care home workers will be able to seek a clinically approved medical exemption. If this is the case, you will need to obtain medical advice from a GP.

The government will be producing separate guidance for clinicians to verify exemptions.

As a care provider what should I be doing now to make sure I comply with the regulations?

Employers need to bear in mind that any care home worker who has not provided proof of being fully vaccinated (or being exempt) by the 11 November 2021 must not be allowed into the care home. There are several things you can do now:

- ✓ Ensure that all care home workers are aware of the mandatory requirement to get vaccinated against COVID-19
- ✓ If a care home worker has not yet been vaccinated against COVID-19 and they do not have a medical exemption, then they should ensure that they have their first dose of the vaccine by 16 September 2021 to ensure they are fully vaccinated by the time the regulations come into force

How do I prove that I have been fully vaccinated?

You will need to provide evidence before 11 November 2021.

This can be provided through the NHS COVID Pass service via the following routes:

The NHS App

The NHS website
NHS.uk

The NHS COVID
Pass letter

An appointment card cannot be used as proof of vaccination status.

I am currently on maternity leave; do I still need to be fully vaccinated by November?



The regulations state that no worker should enter the care home without being vaccinated. If an employee is on maternity leave past 11 November (and isn't due to attend a keep in touch day before then), if they are vaccinated and can provide evidence of vaccination before they return from maternity leave, there isn't a specific need for them to be vaccinated by 11 November. Providers should keep in regular contact with the employee and consult with them at the same time as the other staff, so as not to treat the employee on maternity leave any differently because of them being on maternity leave. If they are already vaccinated, they may as well obtain this evidence now too.

What if a care home worker does not want the vaccine or is exempt?

As an employer speak to that care home worker to understand the reasons of why they are not vaccinated.

Employers are also advised to allow their workers a reasonable opportunity to obtain evidence of exemption before taking formal action.

Under the regulations, dismissing a care home worker for not being fully vaccinated may be a fair reason for dismissal on the basis that the care home worker cannot continue to work in the position that they hold without either the employer or the worker contravening "a duty or restriction imposed by or under an enactment" and therefore dismissal on the grounds of not being vaccinated against COVID-19 may be a dismissal on the grounds of "some other substantial reason".

However, it is important to consider all alternative options prior to this and dismissal should only be considered as a last resort. For example, if redeployment is an option and the employer still dismisses the care home worker, then this may not be a fair dismissal.

Care providers should also consider whether the risk of an unvaccinated care worker can be mitigated by, for example, requiring them to wear additional PPE, limit their contact with residents or put in place additional measures after carrying out a full risk assessment.

Where deployment is the only option and there are multiple care home workers to be redeployed, employers should use objective and non-discriminatory criteria to determine who will be redeployed.

So, what are some key steps I can follow?

In short, prior to any decision being made to dismiss a care home worker an employer should:

- Consult with the care home worker
- Warn them of the risk of dismissal if they do not provide evidence of vaccination or exemption within specified timescales
- Give the care home worker an opportunity to explain their circumstances and any reasons they should not be dismissed. This should be at a meeting. If a meeting is not possible then it can be held virtually or by telephone
- Allow the care home worker to be accompanied
- Take and share notes of any formal meetings
- Explore alternatives to dismissal, such as additional risk management measures or redeployment
- Decide the outcome and communicate this to the care home worker
- Provide a right of appeal

So, if I was dismissed, would I need to work my notice period?

Where dismissal is unavoidable, the employer will still be required to pay the care home worker their notice entitlement.

Care home workers who are not vaccinated will not, however, be able to work their notice period (due to the statutory restriction) and the employer may therefore agree to make a payment in lieu of notice to the worker.

Read Vaccination of people working or deployed in care homes: operational guidance
<https://www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance>

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'Mandatory COVID Vaccination – What it means for you'
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