

Making vaccination a condition of deployment in the health and wider social care sector

Which of the following best describes your opinion of the requirement: Those deployed to undertake direct treatment or personal care as part of a CQC regulated activity in a healthcare or social care setting (including in someone's home) must have a COVID-19 and flu vaccination?

*Must have a COVID-19 vaccination in healthcare **

Please provide details to support your answer (maximum 500 words)

Given the potential impacts of the ongoing Covid-19 pandemic on service users in the health and social care sectors, we agree that a vaccine requirement for workers in the health and wider social care sectors is likely to be a necessary and proportionate measure.

Many individuals with whom health and social care staff come into contact have clinical and other vulnerabilities—they may be especially susceptible to death or serious illness arising from Covid-19 or have limited opportunities to protect themselves against risks posed by unvaccinated staff. The nature of care undertaken in health and social care settings, as well as the environment of such settings, may involve high levels of transmission risk.

While it is possible to reduce the risk of Covid-19 transmission using other means (eg PPE), vaccination is a key public health tool for the purposes of pandemic and endemic infectious disease control. It is not obvious that individuals have a right to refuse vaccination for infectious diseases when such refusal poses a significant threat to the health and lives of others, including in situations in which those at risk are unable to avoid exposure.

In our response to the government's consultation on 'Making vaccination a condition of deployment in older adult care homes' (21 May 2021), we argued that it was preferable to introduce a vaccination requirement across the health and social care sector since parity of treatment is (a) easier to justify in terms of human rights law, and (b) avoids a scenario in which unvaccinated staff migrate from one area (such as older adult care homes) to other areas of health and social care where patients may be as vulnerable, thus putting patients there at increased risk of Covid-19 exposure.

It might be argued that such a vaccine requirement is unnecessary in health care settings specifically, given high absolute levels of vaccination among staff (and higher levels relative to social care). However, further increasing the rate of vaccination among health care staff may make for a further reduction in transmission risk, at a low cost to the staff population given the high rates of vaccine takeup—there appears to be a very high level of background support for vaccination, as such a mandate will affect low numbers of staff who currently refuse vaccination and impose a limited psychological cost on the staff population as a whole. Moreover, the above argument for parity of treatment between health and social care provides a reason to mandate vaccination in health care settings independent of vaccine takeup.

*Must have a COVID-19 vaccination in social care **

Please provide details to support your answer (maximum 500 words)

It is plausible that there are social care settings in which Covid-19 transmission would give rise to adverse outcomes that are on a par with those in care home settings, where vaccination is

already required, and health care. For example, those facilities that provide residential or supported living care or care provided in the community (eg in people's homes). So if there are good reasons to mandate vaccination in care homes, these reasons would seem to carry over to other social care settings much to the same degree.

Should the government opt against parity of treatment (ie mandating vaccination for staff) across health and social care, that is, should the government decide against mandating vaccine for health staff, there are nevertheless compelling reasons for parity of treatment of all social care staff. The government noted in its consultation relating to mandating vaccination in (older adult) care homes that certain care settings have a high proportion of care home staff from a minority ethnic background, who for various reasons may be more vaccine hesitant. One concern arising from mandating vaccination has been the risk of staff exiting the care home sector (indeed the government took action to mitigate this risk—see government response). However, if Covid-19 vaccination is not mandated across the entire social care sector, it seems more plausible that staff from sectors where vaccination is required who are unwilling to be vaccinated as a condition of employment will move to care providers in areas where there is no vaccine requirement. This will transfer risk onto other vulnerable populations elsewhere in the sector. As we observed in our response to the care homes consultation, it is well known that the care sector faces severe staff shortages. As such the notion of 'jab for job' reflects a false, binary choice, when in the absence of a sector-wide vaccine mandate, care staff may be able easily to change jobs within the sector.

*Must have a Flu vaccination in healthcare **

Please provide details to support your answer (maximum 500 words)

Flu is not as dangerous as Covid-19, yet it kills large numbers of people each year. Like Covid-19, flu disproportionately affects individuals who are already vulnerable. The Covid-19 pandemic has taught us valuable lessons on how to respond to airborne infectious diseases, including the effectiveness of vaccine and non-pharmaceutical interventions. The same reasons and rationales for mandating covid vaccination for health and social care staff are in play for flu vaccination. However, the strength of reasons may not be the same—a separate assessment of the necessity and proportionality of mandating flu vaccination is required. Whether the reasons are weaker or stronger will depend on, for example, evidence regarding the relative effectiveness of flu and Covid-19 vaccinations in preventing transmission, and regarding mortality rates in elderly or otherwise vulnerable populations. One reason to think flu vaccination for staff may be as or more important than for Covid-19 is that flu vaccination rates among patients are likely to be much lower for flu.

*Must have a Flu vaccination in social care **

Please provide details to support your answer (maximum 500 words)

See answer above re mandating flu vaccination in health care.

Do you think there are people deployed in or visiting a healthcare or social care setting (including someone's home) who do not undertake direct treatment or personal care as part of a CQC regulated activity but should also be included within the scope of a requirement to have a COVID-19 and flu vaccine?

Yes.

Which people do you think should be covered by the scope of the requirement to have a COVID-19 vaccination and flu vaccination?

All staff.

For COVID-19 and flu vaccination are there people deployed to undertake direct treatment or personal care as part of a CQC regulated activity that should not be in scope of the policy?

No.

Please explain your answer (maximum 500 words)

COVID-19 vaccination

As the government noted in its response to the consultation on mandating Covid-19 vaccination in (older adult) care homes. Staff to staff transmission in care homes is a pressing issue. As such, there would seem to be strong reasons to require all staff deployed in health and social care settings to be vaccinated against Covid-19. A broad vaccine requirement may be especially desirable now that restrictions on working from home and mask-wearing etc have been relaxed for many workers (even if the transmission reduction practices of staff directly involved in patient care have been maintained)

So far as visitors are concerned (we understand visitors to mean family and friends) we should be sensitive to the welfare benefits for care home residents of visitors (as the SAGE Social Care Working Group notes [para 23]), and so while vaccination is highly desirable, it should not be mandated. However, other infection and transmission control measures should be in place, eg PPE, rapid antigen testing, temperature testing etc.

*Flu vaccination **

Please explain your answer (maximum 500 words)

Are there any other health and social care settings where an approach similar to adult care homes should be taken? (that is, all those working or volunteering in the care home must have a COVID-19 vaccination or have an exemption)

We favour instituting vaccine requirements in all settings in which the following (non-exhaustive) factors are present: clinically vulnerable populations, limited ability to self-protect, high risk of transmission.

Which of the following best describes your opinion of the requirement: Those under the age of 18, undertaking direct treatment or personal care as part of a CQC regulated activity (in a healthcare or social care setting, including in someone's home), must have a COVID-19 and flu vaccination?

*COVID-19 vaccination in healthcare **

Please provide details to support your answer (maximum 500 words)

We now know that individuals under 18 pose the same risk of transmitting Covid-19 to others as adults do. Provided that they have had a fair opportunity to get vaccinated when the

requirement is introduced, it would be unjustifiable to exempt them from a vaccination requirement.

COVID-19 vaccination in social care *

Please provide details to support your answer (maximum 500 words)

See above.

Flu vaccination in healthcare *

Please provide details to support your answer (maximum 500 words)

Flu vaccination in social care *

Please provide details to support your answer (maximum 500 words)

Do you agree or disagree that exemption from COVID-19 vaccination and flu vaccination should only be based on medical grounds?

COVID-19 vaccination *

Flu vaccination *

Are there particular groups of people, such as those with protected characteristics, who would particularly benefit from COVID-19 vaccination and flu vaccination being a condition of deployment in healthcare and social care? *

Which particular groups might be positively impacted and why? (maximum 500 words)

Older and clinically vulnerable people (including people who are clinically vulnerable to Covid-19 and cannot gain full protection from or receive vaccination) or disabled individuals will benefit from the policy in particular.

Knowing that health and social care staff are vaccinated and thus pose a reduced transmission risk enables them to seek and receive care that may otherwise carry a high risk to them. Since such groups have been disproportionately negatively affected by the Covid-19 pandemic, this is important.

In addition, since minority ethnic people have been impacted by the Covid-19 pandemic to a greater degree, they stand to benefit from staff being vaccinated, especially where race intersects with age and disability.

Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by COVID-19 and flu vaccination being a condition of deployment in healthcare and social care?

Which particular groups might be negatively impacted and why? (maximum 500 words)

We might expect minority ethnic staff to be particularly impacted by this policy, given the apparently higher prevalence of vaccine hesitancy among this population. For individuals who are not vaccine hesitant, we might expect a vaccine requirement to be low cost, whereas for

individuals who are vaccine hesitant, the policy is likely to be perceived as high cost and an interference with their freedom to refuse medical treatment, as well as a possible threat to their livelihoods.

However, since ethnic minority and marginalised and disadvantaged groups are disproportionately affected by the Covid-19 pandemic, with considerably higher rates of death and injury among such groups, such groups benefit from the policy as patients (and it may also benefit staff in terms of personal protection from Covid-19, notwithstanding vaccine hesitancy).

The government should consider whether to permit exemption from Covid-19 vaccine requirements on religious or belief grounds and publicly explain its reasoning. This is in order to proof any vaccine requirement policy against potential challenges under the Human Rights Act 1998 or the Equality Act 2010. Even if religious or belief exemptions are not afforded, a reasoned public justification is more likely to withstand legal scrutiny.

What could the government do to encourage those working in unregulated roles to have the COVID-19 and flu vaccine? (maximum 500 words)

We would welcome any comments you may have relating to Annex B - proposed addition to the code of practice – criterion 10. (maximum 500 words)

We welcome any further comments you may have relating to this consultation (maximum 500 words)

Vaccination against Covid-19 is not significantly burdensome for most individuals. The interference with bodily integrity and autonomy involved is relatively minor compared to the lockdown restrictions that have been implemented as part of the UK's response to Covid-19. Moreover, the risks of vaccination are very low, and indeed being vaccinated overall benefits most vaccinated individuals, as well as reducing the risk they pose to others.

It is likely that vaccination requirements would interfere with individuals' rights under Article 8 of the European Convention on Human Rights, which protects private and family life, including personal autonomy, bodily integrity, and privacy. But Article 8 is a qualified right. Vaccination requirements that interfere with individuals' rights under article 8(1) will be justified if they: (i) pursue a legitimate aim, (ii) are in accordance with the law and (iii) are necessary in a democratic society, which involves considerations of proportionality. Vaccination requirements would pursue a legitimate aim: the protection of life and (individual and public) health, and the protection of the rights and freedoms of others. In addition to the risk of mortality that Covid-19 infection poses to individuals, there is increasing evidence of serious and potentially enduring morbidities and long-term health complications following Covid-19 infection. Vaccination requirements are therefore likely to be necessary and proportionate.

However, it is important that the government engages with the human rights law implications of its policy, that is, its compliance with article 8 of the European Convention on Human Rights, which provides for, among other things, extensive freedom to refuse medical treatment such that any measure that interferes with this freedom requires legal justification. It is also necessary that the government publishes an equality impact assessment in relation to its policy.

While we are in general favourable to vaccine mandates, we wish to express concern as to the means of legal change. Vaccine requirements are a public health measure that is likely to provoke controversy. As such, it is preferable for the government to introduce primary legislation so that a rigorous public justification can be offered for a change in the law, and so that the measure, if passed, would enjoy greater democratic legitimacy compared to the use of secondary legislation. The government's preference for secondary legislation throughout the Covid-19 pandemic has been subject to continuous expert (eg parliamentary committees, academics) and public criticism.