

UK Government's Department of Health and Social Care Open Consultation: Revoking vaccination as a condition of deployment across all health and social care

RCN Response

BACKGROUND

In October 2021, the RCN responded to the Department of Health & Social Care (DHSC's) consultation on making vaccination a condition of employment in the health and wider social care sector.

On 9 February 2022, the Department of Health and Social Care (DHSC) published an open consultation on revoking vaccination as a condition of deployment (VCOD) across all health and social care in England. This followed the UK Government's announcement on their intention to revoke the regulations making VCOD across all health and social care settings, on 31 January 2022.

To successfully remove VCOD, the two regulations which were made under the Health and Social Care Act 2008 must be revoked. They are:

- a. Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus)(No.2) Regulations 2021 came into force on 11 November 2021 across all care homes in England
- b. Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No.2) Regulations 2022 published on 6 January 2022, was expected to come into force on 1 April 2022 after a 12-week grace period, for all health workers in the health and wider social care sector.

The DHSC have stated that the policy is changing as the Omicron variant of COVID-19, is now known to be less severe than the Delta variant and therefore, has reduced the risk of presentation to emergency care or hospital admission by approximately half of that for the Delta variant of COVID-19.

PROCESS

The deadline for responses is just before midnight on 16 February 2022. The proposal to remove VCOD will be voted on in Parliament after consultation conclusion.

The format of the consultation is an online survey, but the RCN requested to submit a fuller written response and DHSC has confirmed that this will be accepted.

APPROACH TO RCN CONSULTATION CONTENT

The RCN content to the DHSC consultation, set out in the responses below, is taken from the October 2021 RCN submission, messaging put out by the RCN externally in the period since, and additional input from the RCN Vaccine as a Condition of Deployment (VCOD) internal working group.

New RCN positions (meaning they are not set out within the May and October 2021 RCN DHSC consultation submissions) are:

1. That the RCN supports revocation of the regulations introducing vaccination as a condition of deployment in health and care services in England

This position is in line with RCN communications messaging used externally since the RCN October 2021 DHSC consultation submission.

2. That the UK Government should define what the criteria would be for introducing regulation for VCOD in the future

This position is not perceived to be high risk given that is reasonable to seek clarity as to the criteria which the UK Government could seek to use in future.

DHSC CONSULTATION CONTENT

The DHSC survey asks:

- I. Preference for whether the requirement is removed or not.
- II. Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by a COVID-19 vaccination not being a condition of deployment in healthcare and social care? If, yes, which particular groups might be negatively impacted and why? n/a
- III. Are there particular groups of people, such as those with protected characteristics, who would particularly benefit from a COVID-19 vaccination not being a condition of deployment in healthcare and social care? If yes, which particular groups might be positively impacted and why?
- IV. What actions can the government and the health and social care sectors take to protect those with protected characteristics, or the groups you've identified, if COVID-19 vaccination is not a condition of deployment?

RCN RESPONSE

1. With a membership of around 465,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector.
2. This submission sets out the RCN's response to the Department of Health and Social Care (DHSC) consultation on revoking vaccination as a condition of deployment (VCOD) across all health and social care in England, by revoking the two regulations which were made under the Health and Social Care Act 2008 namely:

- 2.1. Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus)(No.2) Regulations 2021 came into force on 11 November 2021 across all care homes in England; and
- 2.2. Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No.2) Regulations 2022 published on 6 January 2022, was expected to come into force on 1 April 2022 after a 12-week grace period, for all health workers in the health and wider social care sector.
3. The RCN notes that the DHSC has stated that the policy is changing based on the rationale from the UK Government that the Omicron variant of COVID-19 is understood to be less severe than the Delta variant and therefore, it is perceived to have reduced the risk of presentation to emergency care or hospital admission by approximately half of that for the Delta variant of COVID-19.
4. It is the RCN's view that the UK Government should set out what, if any, conditions in which the UK Government would reconsider this policy again.
5. As part of this, it is the RCN's view that the DHSC should also take into consideration the polarizing effect that debate and action on the VCOD policy has had on workplace relations, recognising that as the policy caused tension between employers and staff and among colleagues working together to provide care to patients. After the policy was announced, the RCN received a high volume of calls from members describing a range of difficult circumstances indicating that rather than facilitating open discussions which support informed decision-making, in some instances, individuals were being disproportionately pressured.
6. The RCN has been, and remains, of the position that approaches to vaccination should always centre on educating and openly communicating with health professionals on the benefits of vaccination in order to support individuals to make informed choices.
7. It is the RCN's view that if the UK Government brought forward plans to reinstate vaccination as a condition of deployment in the future, especially given the current state of the health and care system in England, and insufficient staffing for safe and effective care, this would significantly impact on the ability of the health and social care workforce to provide safe and effective care.
8. Nursing staff have led the way through the pandemic in reducing infection transmission through demonstrating excellent infection prevention and control (IPC) measures, and leading both the national immunisation programmes and the large scale COVID-19 vaccination programme. IPC, vaccination and implementing public health measures are fundamental to nursing, and registered nurses understand the importance of these key measures in reducing infection rates. The Royal College of Nursing (RCN) expects the Department of Health and Care (DHSC) to pay heed to expertise of registered nurses to help develop and deliver vaccination programmes.
9. The RCN holds significant expertise in primary care and is clear that there have been significant improvements in uptake of the seasonal flu vaccine when there has been senior nursing leadership support and a planned campaign to support hesitant staff. The RCN believes more can continue to be done to support healthcare providers address hesitancy using the knowledge and expertise of nurses working in

vaccination such as general practice nurses, public health nurses and immunisation teams.

10. The RCN recognises vaccination as a key pillar in infection control and disease prevention in healthcare settings. Ensuring there are high rates of vaccination among staff is critical to limiting the spread of COVID-19, as seen in the PHE (2021) COVID-19 vaccine surveillance reports.ⁱ It is set out widely within the Nursing and Midwifery Council code of practice that getting vaccinated is the right thing to do for professional practice for all registrants.ⁱⁱ
11. At the time considerations were being made by the UK Government, the RCN urged caution regarding introduction of mandatory vaccination policy.ⁱⁱⁱ The RCN believes all health and care staff should receive the Covid-19 vaccine to keep themselves and their patients safe but that making vaccine mandatory risked creating division where there should be conversation instead. The RCN continues to assert that support and education would be more effective in increasing uptake across health and care staff.
12. As the RCN previously highlighted in DHSC consultation process regarding the introduction of vaccination as a condition of employment, health and social care providers (HSCPs) must also be able to deliver good quality services, safely. This also includes equipping the system nationally to ensure that HSCPs are able to recruit and retain the registered nurses and nursing support workers they require to provide safe and effective care for patients.
13. The RCN is clear that staffing for safe and effective care is dependent on there being enough health and care staff with the right mix of skills to meet patient's needs, in the right place at the right time. The nursing profession is already experiencing significant issues with nursing retention, presenting real risks to patient care and safety that must be mitigated. Major factors currently impacting registered nurse and nursing support worker retention are lack of fair pay, unsafe working conditions due to insufficient staffing levels, and burnout as a result of going into a pandemic with existing, substantial workforce vacancies. In the previous DHSC consultation process, the RCN expressed clear concern that the policy could impact negatively on retention of existing staff, especially in the current context of registered nurse and nursing staff vacancy rates.
14. The RCN also notes concerns expressed throughout this process of the impact on nursing student recruitment and retention, when it comes to vaccination as a requirement for access to clinical learning placements as part of nursing higher education. It is the RCN's view that these risks will remain and should be taken into account by DHSC, moving forward.
15. The Government in England, and health and care systems in England, hold statutory responsibilities for the provision of a health service. It is the RCN's view that public policy must enable and promote workforce recruitment and retention in health and care services, to provide safe and effective care. It is the RCN's position that this must be the first guiding principle for policy.
16. The UK Government's Impact Assessment^{iv} on COVID-19 vaccination as a condition of lose up to 73,000 staff members as a result of COVID-19 vaccination being a

condition of deployment. Therefore, removing vaccination as a condition of deployment will be of particular benefit for retention of staff across care and the wider health sector. While the UK Government is now seeking revocation, the RCN notes that in the approaches taken up until this point, despite the impact assessment undertaken, there has been insufficient assurance that the UK Government had fully considered and mitigated the potential impact of vaccination as a condition of deployment sufficiently on existing health and care service capacity before putting the policy into place.

17. The RCN therefore supports revocation of these specific regulations which were put in place to introduce vaccination as a condition of deployment in health and care services in England.
18. The RCN's position remains clear that all members of the nursing team should always take the recommended precautions to help protect themselves, patients, colleagues, family members, and the wider community. The RCN recognises the Green Book 'Immunisation against infectious diseases' as the fundamental guidance that supports who and when people should be vaccinated.^v The RCN advises that anyone exempt from vaccination should be risk assessed for their work environment by their employer to ensure the safety of both staff and patients.
19. It is considered that there are very few people for whom vaccination is contraindicated, and any staff member refusing to be vaccinated should be supported by registered nurses with expertise in vaccination, and failing that, they should be risk assessed by their employer. Anyone who chooses not to be vaccinated must be risk assessed by their employer and deployed appropriately.
20. The RCN's position is that ensuring there are high rates of vaccination among staff is critical to limiting the spread of COVID-19, as seen in the COVID-19 vaccine surveillance reports. Staff who remain hesitant to vaccinate should receive support and education on the benefits of receiving the COVID-19 vaccine, for themselves, their colleagues, family and friends, and their patients.
21. As the RCN highlighted in our response to the consultation on introducing vaccination as a condition of deployment in healthcare services, the World Health Organisation (WHO) states that "Like the wider population, health and care staff are a diverse group and there are both physical and societal barriers for some vaccine uptake. This needs to be addressed by all organisations and employers, who need to take a proactive approach."^{vi} The WHO states that this includes:
 - Ensuring staff have easy access to the vaccines they need within the working day;
 - Providing staff with access to clear information about the risks and how to overcome or manage those risks, as well as information about the value and benefits of vaccination; and
 - Providing confidential support to staff who have any vaccine related concerns.
22. The RCN is clear that all employers must make sure that prospective staff are given information and advice on the benefits of vaccination in a supportive way, and staff should be supported to make informed decisions about the vaccine. Staff should have clear and easy access to support with the right information, encouragement

and clear explanation of the benefit and value of the vaccine. These measures will help improve their confidence in vaccination and facilitate a high vaccine uptake.

23. The RCN notes that supplementary guidance to the Control of Substances Hazardous to Health Regulations 2002, the Health and Safety Executive (HSE) states that employers should explain the advantages and disadvantages of immunisation versus non-immunisation. HSE also states that immunisation should be seen only as a useful supplement to reinforce physical and procedural control measures, not as the sole protective measure. The HSE also states that employees may not wish to take up the offer of immunisation, or they may not respond to a vaccine and will therefore not be immune. As such, employers need to consider the effectiveness of the other controls and consider whether any additional controls should be implemented to allow them to work safely.
24. The RCN is also clear that all health and care employers should also be supported to put into place effective Infection Prevention and Control measures, and additional funding may be required to ensure that adequate guidance is in place, including to ensure that additional Personal Protective Equipment (PPE) that is required is readily available.
25. Alongside this, it is the RCN's position that appropriate funding should also be put into place to enable employers to facilitate staff being absent from work if they are unwell, and to seek to ensure that staffing for safe and effective care is in place. Robust processes for testing and isolation where COVID-19 affects staff and patients must remain in place to manage the spread of infection and the impact on staff and patients.
26. It is the view of the RCN that, COVID-19 vaccination not being a condition of deployment in health and social care, may positively impact ethnic minorities. Recent surveys by The London School of Hygiene and Tropical Medicine have suggested that vaccination as a condition of employment would marginalise vaccine hesitant groups – such as ethnic minority staff. Therefore, it is likely that this group will be positively impacted by COVID-19 vaccination not being a condition of deployment in health and social care settings.
27. Another group of people who will likely positively benefit from a COVID-19 vaccination not being a condition of deployment are internationally educated health and care workers who have come to the UK on Skilled Worker visas, and who so far, have chosen not to have the vaccine. Under a mandatory vaccination policy, their ability to continue to live and work lawfully in the UK would be negatively impacted if they were to be dismissed from work due to not having had the COVID-19 vaccination – as their residence in the UK is dependent on continuous employment through the Skilled Worker visa programme. COVID-19 vaccination not being a condition of deployment may also encourage potential internationally educated health and care workers to come to the UK to work.
28. The RCN is currently supporting staff working in care homes and health services who have been dismissed from their employment as a result of the planned regulatory change. The RCN asks for an update from DHSC as to what advice is being given to employers to reinstate employment, and relationships, with staff who have experienced very these very difficult circumstances.

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ⁱ PHE (2021) COVID surveillance reports <https://www.gov.uk/government/publications/covid-19-vaccine-surveillance-report>

ⁱⁱ NMC <https://www.nmc.org.uk/standards/code/>

ⁱⁱⁱ RCN (October 2021) CONSULTATION RESPONSE: Making Vaccination a Condition of Deployment in the Health and Wider Social Care Sector <https://www.rcn.org.uk/about-us/our-influencing-work/policy-briefings/conr-12421>

^{iv} [The Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) Regulations 2021 -](#)

^v PHE (2013) Immunisation against infectious disease <https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book>

^{vi} World Health Organisation (2014) *Tackling Vaccine Hesitancy*