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Vaccination as a Condition of Deployment (VCOD) for Healthcare Workers

Version 1, 14 January 2022

Phase 2: VCOD Implementation

Guidance for employers in healthcare in England

Contents

Introduction	2
Key implementation dates.....	5
CQC monitoring and inspection approach.....	6
Data access and use	7
Communication and engagement	9
Formal processes	11
Reconfiguration of roles	13
Redeployment for the purposes of VCOD	14
Termination of employment for the purposes of VCOD.....	19
Service contingency plans	22
Resources.....	23

Introduction

On 6 January 2022, the Government made new legislation¹, approved by Parliament, which amended the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the 2014 Regulations”). This extends the scope of mandatory vaccination requirements for staff beyond registered care homes to health and wider social care settings in England.

The regulations provide that the registered person can only deploy or otherwise engage a person for the purposes of the provision of a CQC-regulated activity, in which they have direct, face to face contact with patients and service users, if the person provides evidence that they have been vaccinated with a complete course of a Medicines and Healthcare products Regulatory Agency (MHRA) approved COVID-19 vaccine. This is subject to specific exemptions and conditions.

The vaccination as a condition of deployment (VCOD) requirements include front-line workers, as well as non-clinical workers not directly involved in patient care but who may have face to face contact with patients, including ancillary staff such as porters, cleaners or receptionists.

The VCOD regulations allow a grace period for compliance and the requirement will come into force on **1 April 2022**.

For the purposes of this guidance the VCOD regulations will be referred to as ‘the regulations’.

Registered Person

The registered person within this guidance refers to the person (individual, partnership, or organisation) registered with the CQC as being responsible for the delivery and quality of a service providing CQC regulated activity in England.

The purpose of this guidance

This guidance is supplementary to [phase one guidance](#) which focused on planning and preparing for the regulations to be approved.

NHS England and Improvement (NHSEI) has engaged with the Social Partnership Forum (SPF), NHS Employers, the Department of Health and Social Care (DHSC) and Care Quality

¹ [The Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) \(No. 2\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Commission (CQC), to develop this guidance to support service providers with implementing and complying with the VCOD Regulations and conducting formal processes for staff who will be unvaccinated on 1 April 2022.

Who this guidance is aimed at?

This guidance is aimed at NHS Trusts and Foundation Trusts, Integrated Care Systems (ICS), Community Interest Companies (CICs), and all organisations registered with CQC for the purposes of providing health care. The guidance and principles set out can also generally be applied to other organisations providing NHS-commissioned services, such as primary care services and to the independent sector.

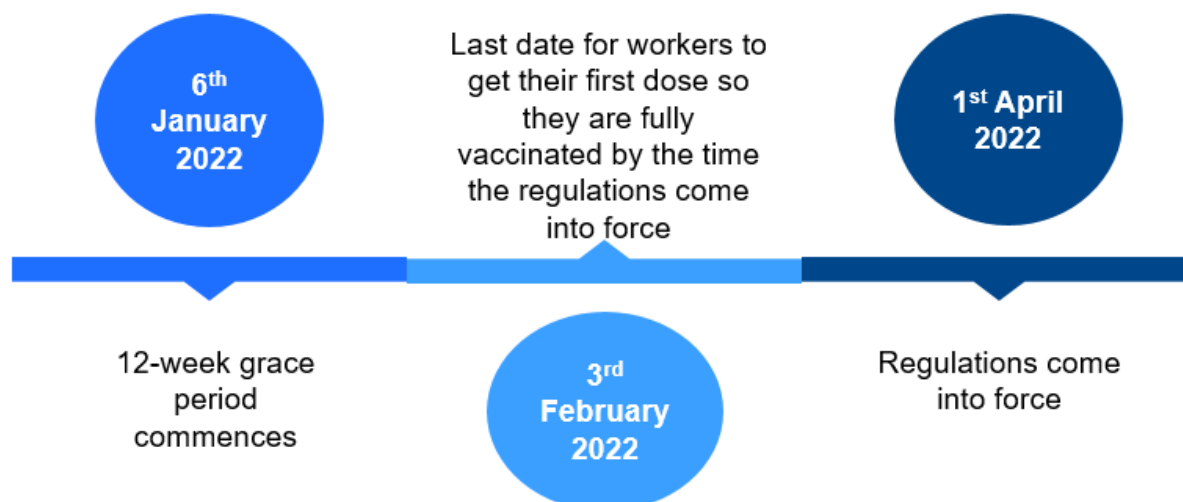
The approaches to formal processes detailed in this guidance may vary from organisation to organisation, depending on the facts and circumstances in each case, and as such, it is recommended that organisations seek their own legal advice on such matters.

Key messages in phase one guidance:

- The responsibility of the registered person is to only employ or otherwise engage a person for the provision of a CQC regulated activity who has face to face contact with patients or service users, if it is evidenced that they have been vaccinated with a complete course of an authorised vaccine against COVID-19, or that the individual satisfies one of the regulations' specific exemptions and conditions.
- The regulations will protect vulnerable people and individual workers in health and social care settings, and they apply in all such settings including hospitals, GP practices, dentist surgeries, within community services and where care is delivered in a person's home.
- The regulations will apply where a regulated activity is delivered through substantive, seconded or fixed-term staff, bank and agency workers, contractors, volunteers, locums, honorary contract-holders, students or trainees, or any other type of worker involved in the provision of a CQC regulated activity and who has direct, face to face contact with patients or service-users.
- The requirement will not apply to those who:
 - Are under the age of 18
 - Are medically exempt
 - Have participated in a clinical trial for a COVID-19 vaccine

- Are pregnant and have a temporary exemption which will be valid until they are 16 weeks post birth
 - Are not in scope of the VCOD regulations. Should help be required with determining if a worker is in/out of scope of the regulations, please refer to the *Workers required to be vaccinated as a condition of deployment* [flowchart](#) in guidance phase one, appendix 1
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- Employers are advised to proactively plan their approach to compliance with the regulations in partnership with staff-side representatives, commencing with the identification and assessment of roles in scope of the regulations and a review of staff vaccination data.
 - Employers will need to have processes in place to document in scope workers' vaccination and exemption status and ensure on-going monitoring.
 - Employers will need to take action with providers/sub-contractors/agencies regarding third-party workers, to review commercial contracts. The registered person will need to ensure that clear governance and systems are in place to confirm in scope roles and that the registered person is provided with evidence that no third-party workers are provided in breach of the regulations.
 - Organisations should actively support vaccination uptake via communication and engagement with staff. Disseminating vaccine information, conducting supportive one-to-one conversations, and engaging with clinical and community experts will help to convert vaccine hesitancy to vaccine uptake.
 - Working in partnership arrangements within Integrated Care Systems (ICSs) can help to share resources, support, and widen opportunities for redeployment of unvaccinated staff who are not exempt from the regulations e.g., ICSs can support primary care providers in identifying any opportunities for redeployment within the wider health care service.
 - Workforce planning should include the consideration of reconfiguration of roles and services, where it is reasonable to do so, to mitigate against the potential impact of the regulations with regards to staffing levels.

Key implementation dates



- **6th January 2022** – this is when the 12-week grace period between the regulations being made and coming into force, commences. This period is intended to give providers and workers time to prepare and meet the new regulatory requirements. Communication and engagement with staff, supportive in nature, should have commenced with workers before this date, to respond to vaccine hesitancy and drive vaccination uptake.
- **3rd February 2022** - the last date for workers in scope of the regulations to get their first dose of an authorised vaccine (unless exempt) so they can be fully vaccinated with a complete course of doses of an authorised vaccine (as listed in guidance on the approved COVID-19 vaccines and countries and territories with approved proof of vaccination) by 1 April 2022. Under current vaccination guidance, eight weeks are required between the first and second vaccine dose.
- **1st April 2022** regulations come into force.

CQC monitoring and inspection approach

The Phase One guidance detailed CQC's expectations of the registered persons (registered managers, registered providers) in regard to compliance with the regulations. In summary, the registered person will need to be able to demonstrate and provide assurances that they have systems, processes and robust governance in place to monitor vaccination and COVID-19 status (including exemption status) of the people they employ or otherwise engage for the purposes of the provision of the regulated activity. Any evidence collected and recorded (personal data), must be handled in accordance with UK GDPR.

The registered person should also be able to evidence that workers are provided with appropriate information about the vaccines and the regulations in addition to staff being supported to access the vaccine.

CQC has published a statement on their website outlining their [approach](#) to VCOD.

Monitoring

The regulations will form part of the [fundamental CQC standards](#) for health and wider social care and as such the following question is added to the Provider Information Return (PIR) and built it into their monitoring approach *'How are you assured that those you employ and deploy within your service are vaccinated in line with government requirements?'*²

Enforcement

When the new requirements under the regulations come into force 1 April 2022, CQC will use their existing assessment approach and enforcement policy to assess compliance within the services they regulate. Any enforcement activity which is generated as a result of non-compliance with the regulations will be undertaken on a proportionate basis and based on the CQC's assessment of the impact on quality of care and people's welfare and safety. They will also consider individual circumstances when assessments are carried out and when a decision is to be made to take further action for potential breaches of the regulations.

It is recommended that employers conduct a provider assessment on roles deemed out of scope, but which carry some uncertainty. The rationale for the decision of the role being deemed out of scope, the context and mitigations put in place if applicable, must be recorded. [Further information on CQC's enforcement policy is available.](#)

² [Statement on COVID-19 vaccination of people working/deployed in care homes: the role of the Care Quality Commission | Care Quality Commission \(cqc.org.uk\)](#)

Data access and use

NHS providers will be legally required to be able to demonstrate the COVID-19 vaccination status of their staff, and therefore will need to collect, store, and use information about this. The Government's guidance states that NHS organisations are required to review and retain proof of staff and volunteer members' COVID-19 vaccine status. Managers of NHS providers therefore need to know whether or not individuals have been vaccinated, both to plan for their workforce and service delivery in the context of the new legal obligation, and to be able to demonstrate compliance with it on an ongoing basis.

Establishing vaccination status

There are a number of ways in which vaccination status can be obtained:

- Staff can be asked directly about their vaccination status.
- Organisations that have undertaken their own vaccination delivery programme can look up which staff have received vaccinations.
- Central databases that record vaccination data from the national vaccination programme can be used and integrated with staff records.

In order to reduce burdens on organisations and staff, a small number of designated members of staff in organisations (e.g. designated individuals in HR & OD teams) can be given access data about staff which has been recorded on the NHS England National Immunisation System (NIMS) database and linked to the NHS Electronic Staff Record (ESR) number. To be clear, the only clinical information that will be made available to NHS organisations from the national immunisation database is an individual's COVID-19 vaccination status. By getting this information from NHS England's immunisation database individuals will not need to provide evidence of their vaccination status, making it easier for both them and their managers.

The legal basis for obtaining and using vaccination status information

Data protection law provides that it is lawful to 'process' (use) 'special category data' (i.e. health data, including information about vaccination status) where:

- it is necessary for employment purposes.
- it is in the 'substantial public interest', including to comply with legal obligations.
- it is necessary for the management of healthcare services; and/or
- it is necessary for public health purposes.

The Control of Patient Information ([COPI notices](#)³ issued by the Secretary of State for Health and Social Care under the Health Service (Control of Patient Information) Regulations 2002, provides a legal basis for NHS England to disclose this information to health and care organisations, and NHS organisations are required under the COPI notice to process what would otherwise be confidential patient information for ‘COVID-19 purposes’. This includes:

- *“monitoring and managing the response to COVID-19 by health and social care bodies and the government including providing [...] information about capacity, medicines, equipment, supplies, services and the workforce within the health services and adult social care services*
- *delivering services to patients, clinicians, the health services and adult social care services workforce and the public about and in connection with COVID-19, including the provision of information, fit notes and the provision of healthcare and adult social care services.”*

Further information is available on the legal framework which supports access to the vaccination data: [COPI notice - frequently asked questions](#).

The COPI Notice therefore provides a legal basis for NHS organisations to use what would otherwise be confidential patient information to support the pandemic response. Organisations need to know the vaccination status of individual members of staff who have direct face to face contact with patients and service users in order to protect patients and the workforce. A record should be kept of all data processed under the COPI notice.

Information governance

Organisations should also:

- Complete a data protection impact assessment describing how they plan to use staff vaccination status information, including privacy risks that might arise from this.
- Have an ‘appropriate policy document’ in place describing how the processing of staff information complies with data protection law.
- Limit who has access to information about staff vaccination status, to only those that ‘need to know’ as part of their role, and ensure that those that have access to this information are aware of its confidential and sensitive nature and handle it appropriately;

³ <https://www.gov.uk/government/publications/coronavirus-covid-19-notification-of-data-controllers-to-share-information/coronavirus-covid-19-notice-under-regulation-34-of-the-health-service-control-of-patient-information-regulations-2002-general--2> . Equivalent notices have been given to NHS England and Improvement and NHS Digital.

- Make information available to staff describing how vaccination information is used ('fair processing' information).

Communication and engagement

Collective Consultation

Employers have responsibilities under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) to collectively consult with staff being made redundant. NHSEI and the Department for Health and Social Care have considered the issue and do not believe that any dismissals arising because a worker is unvaccinated should engage section 188 requiring collective consultation. However, this is ultimately a decision for each organisation to take independently and based on its individual circumstances.

It is important to note this is not a redundancy exercise. In the context of the regulations, there is no diminishment or cessation of work of a particular kind. Employers will not be concerned with finding "suitable alternative employment" and there will be no redundancy entitlements, including payments, whether statutory or contractual, triggered by this process. The redeployment or dismissal of workers is determined by the introduction of the regulations and an individual's decision to remain unvaccinated.

Whilst organisations are encouraged to explore redeployment, the general principles which apply in a redundancy exercise are not applicable here, and it is important that managers are aware of this.

In any event, organisations will wish to work in close collaboration with their local staff side representatives as far as possible to develop agreed approaches to issues such as redeployment, potential dismissal of staff and related processes due to VCOD.

It is also recommended that engagement with health and safety representatives should take place with regard to the potential impact the regulations will have on workforce health and safety e.g. the implementation of the regulations, changes to risk assessments and changes to working arrangements.

Communication with the workforce

Organisations, should have already engaged with their workforce about the regulations, primarily:

- the vaccination requirement.
- the need for people over 18 providing work or services to evidence vaccination or medical exemption.
- how the organisation is supporting workers to be vaccinated.
- addressing vaccine hesitancy and concerns.
- the potential consequences of not meeting the requirement on time.

Organisations are reminded to communicate with staff who are under the age of 18 on 1 April 2022 but will turn 18 later. This is because the requirement to be vaccinated or medically exempt will immediately apply when a staff member reaches the age of 18.

Formal processes

Formal processes outlined in this section apply only to those employed under a contract of employment with an employer (and not to other workers who are in scope of the regulations e.g. contactors, agency workers and volunteers), who are not fully vaccinated (excluding individuals who are exempt from the regulations as per pages 11 – 12, in [phase one guidance](#)).

Where an exemption applies, individuals may remain working in their current patient/service user-facing role if it is safe to do so and it is recommended that their risk assessments are reviewed to consider whether additional measures are required to mitigate against potential risks and provide additional support if necessary.

Staff should be provided with a reasonable opportunity to be vaccinated or obtain evidence they are exempt before any formal action is taken. In some circumstances, employers may need be flexible with regard to when formal processes commence as a reasonable adjustment.

Step one: engagement with unions

Employers should engage and work in collaboration with their trade union or staff side representatives, as to the formal measures being taken in respect of redeployment processes and potential dismissals of staff due to VCOD.

Step two: formal review process

It is recommended that within the grace period (from the 6 January 2022) a formal review process with staff who decline to disclose their vaccine status, for whom vaccination status cannot be ascertained, or who are unwilling to participate in the COVID-19 vaccination programme (and are not medically exempt) should take place, in which the consequences of remaining unvaccinated are clearly explained. This formal review process can be undertaken by way of meetings (whether in person or virtually), by written correspondence or a combination of these methods of communication, as appropriate in the particular case. The formal review process should include clarification of the dates by which the requirements must be complied with, and what steps will be taken for those who remain unvaccinated by those dates.

Alternative options potentially available to the individual, such as any possible adjustments to their current role, restrictions to duties or redeployment opportunities available, should also be explored with the individual, noted in writing and timescales confirmed. The individual

should be asked to make suggestions on potential adjustments to their current role and due consideration given to any such suggestions.

During this formal review process, line managers will need to advise staff that if the above options cannot be facilitated, a possible outcome is that the individual may be dismissed from their employment with their last day of employment being 31 March 2022 (or after depending on contractual notice period) if they remain unvaccinated or have not disclosed their vaccination status.

Staff may be given the opportunity to be accompanied to any meeting which takes place during the formal review process by a trade union representative or work-based colleague.

Where staff are away from work, for example on maternity leave, sabbatical, or long-term sick leave, employers should make appropriate arrangements in good time to avoid lack of knowledge of the requirement and potential outcomes of non-compliance being a barrier to returning to work on time.

Step three: formal meeting

From 4 February 2022, staff who remain unvaccinated (excluding those who are exempt) should be invited to a formal meeting chaired by an appropriate manager, in which they are notified that a potential outcome of the meeting may be dismissal. Meetings may take place in person or virtually.

Any dismissal will be on the grounds of contravention of a statutory restriction i.e. the regulations. Please refer to [section 3 *Termination of employment*](#), for further information regarding dismissal processes due to the regulations.

It should be noted that employers can issue staff with contractual notice of dismissal whilst they explore redeployment options, and thus **notice periods and the search for alternative roles can run concurrently**. Every effort should be made to redeploy staff within their notice period up to and including their last date of service.

Formal processes leading to the termination of employment, including issuing notice of dismissal, should not commence before the 6th January 2022 and notice should not expire before 31 March 2022.

Equality Act 2010

In the consideration and exercise of formal processes for the purposes of the regulations, employers have a duty to ensure that they have due regard to the Equality Act 2010. Employers will need to ensure (not an exhaustive list):

- Formal processes avoid unlawful discrimination; for instance, for staff with a disability it may be necessary to make reasonable adjustments to any formal process followed.
- Formal processes should advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- That due regard is given to the impact of decisions on those people with one or more protected characteristics, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, marriage and civil partnerships, and sexual orientation.
- Redeployment processes which may include multiple cases of potential redeployment for a variety of reasons concurrently, are conducted in an equitable fashion.
- Where multiple cases of redeployment are being considered including for reasons other than unvaccinated status, organisations should take into account the enhanced statutory rights of disabled people and pregnant women.

Please refer to DHSC's [Making vaccination a condition of deployment in health and wider social care settings - Equality Impact Assessment](#) for further guidance with regard to the regulations equality analysis, in respect of people with protected characteristics.

Reconfiguration of roles

Employers will need to consider whether it is reasonable, practicable or appropriate to reallocate patient/service user facing duties amongst existing teams to enable an individual to continue working in their current role whilst remaining unvaccinated. An evaluation of the impact of amending an individual's duties will need to include consideration of the potential impact on resources, other staff within the service, the wider organisation and service provisions. **Patient pathways, care and experience must not be compromised.**

Employers should also be mindful to act consistently in conducting these evaluations to ensure fairness in approach and equality of opportunity.

Risk assessments will need to be reviewed and updated in line with changes to individual circumstances, to ensure the mitigation of workplace risk, identification of reasonable steps to be taken for health and safety purposes, so far as is reasonably practicable, and to establish if the individual requires additional support.

The reconfiguration of an individual's role should be effective from 1 April 2022 in accordance with the date the regulations come into force.

Redeployment for the purposes of VCOD

The approach to the redeployment of staff for the purposes of VCOD should be guided by the principles outlined in this section, which the Social Partnership Forum (SPF) has contributed to. This will ensure a fair, transparent, and efficient process with regard to the exploration of possible alternative employment.

It is unlikely that most organisations' local policies and procedures will apply to redeployment due to unvaccinated status. Whilst there may be similarities in approach to existing redeployment policies and procedures, employers will need to be cautious about extending said policies (e.g. the application of redeployment as a result of organisational change) to those under the scope of VCOD redeployment and thus setting a precedent.

The principles set out below provide a framework for organisations to follow as a standalone process.

Organisations should proactively identify roles not in scope of the regulations and if possible and if it doesn't compromise patient care and services, pause external recruitment processes to allow for internal redeployment. The earlier the exploration of redeployment options can take place, the better informed the individual can be as to whether the process is likely to deliver a beneficial outcome and in turn has any bearing on their decision whether to be vaccinated.

It is acknowledged that for many providers, redeployment of staff for the purposes of VCOD may not be feasible or practical.

Temporary redeployment

As noted in phase one guidance, scientific advice is that pregnant women can be vaccinated against COVID-19⁴. However, a short-term medical exemption from the COVID-19 vaccination is an option that pregnant woman may choose to take (pregnant woman can apply for an exemption or use a MATB1 certificate as an alternative). The exemption expires 16 weeks after giving birth. This will allow them to become fully vaccinated after birth. Whilst the short term exemption means that pregnant women can continue to be deployed in their role, temporary redeployment may be considered and mutually agreed upon following the

⁴ <https://www.gov.uk/government/publications/safety-of-covid-19-vaccines-when-given-in-pregnancy/the-safety-of-covid-19-vaccines-when-given-in-pregnancy>

outcome of applicable risk assessments (COVID-19 risk assessment, pregnancy and expectant mothers risk assessment) or on the advice of occupational health.

Permanent Redeployment

Responsibility of the employer

- To ensure all recruitment and selection processes are carried out in accordance with local policies and procedures, best practice, and employment legislation.
- To work in partnership with other organisations within Integrated Care Systems (ICS) to explore the potential for wider redeployment opportunities across all service providers.
- Whilst this is not a redundancy scenario and therefore an organisation's local policies on suitable alternative employment and "slotting-in" will not apply to redeployment due to unvaccinated status, organisations may consider suitable slotting in opportunities where appropriate.
- Employers should provide individuals with easy access to job vacancies. This can include sharing vacancies lists.
- Whilst there is no guarantee that staff will obtain redeployment opportunities, employers must be committed to providing support and redeployment assistance to staff.
- To ensure staff who require VCOD redeployment are not provided with preferential treatment over other staff in organisational redeployment 'pools' and who might have a legal entitlement to redeployment.

Responsibility of manager

- Ensure there will be no unreasonable delays in commencing redeployment processes as an alternative to dismissal, for unvaccinated staff.
- Make reasonable efforts to support staff through the redeployment process inclusive of the continuation of one-to-one conversations, signposting staff to information, occupational health and/or specialist expert advice to address vaccine hesitancy.
- Proactively identify potential redeployment opportunities.

- Wherever practicable and reasonable, support staff who are successful in obtaining alternative employment through their transition period to the new role via access to training and development or other forms of support.
- To keep communication open and transparent throughout with staff and their representatives, where applicable.

Responsibility of employee

- Proactively engage in supportive conversations and consider the advice and information from specialist experts regarding vaccinations.
- Communicate changes in their vaccination status to their line manager without delay.
- To proactively search for and identify redeployment opportunities as an alternative to dismissal, keeping their line manager up to date on their progress.
- Engage with and participate in redeployment processes.
- Create either a CV or a recruitment profile, detailing skills, knowledge and competency and the types of role for which they wish to be considered.
- To recognise that redeployment opportunities may change current working arrangements inclusive of hours, pay and place of work, and impact upon professional registration if applicable.
- Should an individual decide not to apply for, or take up an offer of, a role identified as a permanent redeployment option, they will notify their line manager without delay, setting out their reasons for their decision.

Recruitment and selection

- Whilst organisations should look for redeployment opportunities, it must be noted that unvaccinated staff should not be given priority to vacancies over staff who are legally entitled to additional protection due to maternity leave or disability, or to 'slotting in' under a contractual organisational change policy;

- Staff will need to create either a CV or a recruitment profile, detailing their skills, knowledge and competency and the types of roles for which they wish to be considered.
- There should be clear agreed processes as to how staff will access vacancies i.e. via a regular circulated list of existing vacancies, for which they are free to apply, or by providing access to vacancies via organisational recruitment systems.
- Suitable vacancies i.e. those that do not fall within scope of the regulations, will not be opened to staff within the wider internal workforce who do not require redeployment due to VCOD (excluding staff who require redeployment due to organisational change, ill health, pregnancy/maternity or any other legal entitlement) or to applications externally, until it is established that no unvaccinated staff member is appointable;
- Redeployment opportunities will be achieved by staff applying for a role(s) unless an organisation considers that the use of “slotting-in” is appropriate in circumstances.
- The application of equality principles will be included in all recruitment and selection processes in accordance with the principles that underpin improving recruitment and career progression for all staff.
- Decisions in relation to alternative employment opportunities should be made objectively and without prejudice. A decision not to appoint must be justifiable and based on evidence which will withstand objective scrutiny and may include that the individual is not the best candidate for the role and/or that the individual does not meet the identified essential criteria required for the role and would be unlikely to be able to do so following reasonable training and support. The validity of recruitment decisions can be tested as part of any future dismissal process including consultation with the individual up to the effective date of termination and any appeal which follows.

Outcome

- A record of the reasons for the decisions made following a recruitment process should be kept, detailing clear justification as to why the individual has been successful/unsuccessful at obtaining the role.

- Individuals should be provided with the opportunity for feedback if they are unsuccessful at obtaining an alternative role to help with future interviews and assessments.
- Should an individual decline an offer of permanent employment following a recruitment process, they must notify their line manager, setting out their reasons for their decision. They will continue to be considered for redeployment up to and including their last date of service.

All changes to an individual's role/duties should be documented and expressly agreed with the individual. The impact of changes to working arrangements, banding, contractual hours, enhancements etc., on a staff member pay should be explained and followed up in writing.

The commencement date of all redeployments to new roles is 1 April 2022 in accordance with the date the regulations come into force. This date can be brought forward if mutually agreed with the employee.

Pay Protection

- Where redeployment is undertaken for the purpose of the VCOD framework, individuals in scope of the regulations are not eligible for pay protection of their basic salary or additional earnings (e.g. on-call payments, unsociable hours enhancements, high cost area supplement) should they obtain employment at a lower band/grade to the one currently held, with different working arrangement;
- Staff who are temporarily redeployed at the discretion of the organisation due to not being fully vaccinated for good reason until shortly after 1 April 2022 or due to being pregnant may be eligible for pay protection (inclusive of enhancements) in accordance with local pay protection arrangements.

Redeployment support for staff

- It is recommended that individuals be provided with the opportunity to informally discuss identified alternative roles with relevant parties (e.g. their line manager or the recruiting manager).
- The following measures will be considered by an organisation:
 - access to support services such as interview skills workshops.

- signposting to staff psychological, health and wellbeing services.
- reasonable paid time off to attend interviews.

Termination of employment for the purposes of VCOD

Employers will need to consider the termination of employment of staff whose roles are in scope of the regulations and who refuse to be vaccinated in-line with the mandated timescales (excluding staff who are exempt) or decline to disclose their vaccination status. Any such termination should be undertaken lawfully, which requires that there be a proper reason for the dismissal and that a fair and reasonable procedure is followed.

Employers should consider an individual's reasons for declining to be vaccinated and examine options short of dismissal, where appropriate. However, if it's not feasible to implement alternative solutions, staff will be taken through a formal process to dismissal.

As previously detailed, the fair reason for dismissal will be on the grounds of a contravention of statutory restriction or in the alternative, "some other substantial reason" (SOSR). SOSR could apply where, for example, an individual refuses to confirm their vaccination status and it cannot be established from existing records. It is unlikely that employers will have any existing policy in place for the management of dismissals on this basis and accordingly, employers will wish to be clear about the process they will apply in order to ensure fairness and consistency across the organisation.

Organisations should follow a fair and reasonable dismissal process to provide protection against unfair dismissal claims and such a process should include the following steps:

- Inviting the individual to an initial meeting to discuss the regulations and their vaccination status which could be either in person or virtual.
- One-to-one supportive conversations, discussing concerns, providing vaccination information materials and access to specialist experts.
- Consideration of the extent to which the regulations affect the individual's ability to carry out their job i.e. it is a legal requirement of the individual's role.
- Consideration of any possible adjustment to the individual's role.
- Consideration of alternative roles.

- Invitation to a meeting (either in person or virtually) warning the individual that the outcome may be dismissal if they do not evidence, they are vaccinated or exempt within specified timescales.
- A meeting (either in person or virtually) at which the individual can be accompanied by a trade union representative or work-based colleague. The Chair of the meeting should assess whether adequate consideration of alternatives, such as adjustment or redeployment, has been given and whether, in light of those matters, employment should be terminated.
- Dismissal on notice (in accordance with contractual arrangements) to terminate not before 31 March 2022.
- Providing the individual with a right of appeal against dismissal.

It is recognised that some employers may have significant numbers of unvaccinated staff who cannot be redeployed, and accordingly, processes may need to be adjusted to enable them to take place within the required timescales. In all cases, processes should ensure that individuals' representations can properly be taken into account and that overall, they are fair and reasonable in the circumstances.

In all cases, robust documentation of actions taken to date inclusive of a summary of discussions held, formal letters to the individual and redeployment efforts, should be maintained to support the assessment of the reasonableness of the employer's decision to dismiss. The validity of recruitment decisions can be tested as part of any future dismissal process.

Notice of Dismissal

Notice of dismissal should not be issued before 4 February 2022 and should not expire before 31 March 2022. Staff should not be pre-emptively issued with notice of dismissal at any point prior to the date by which they are required to have received their first vaccination, given that they may still wish to change their mind and seek to be vaccinated.

Where individuals are serving a notice period which extends beyond 1 April 2022, they will need to be redeployed or removed from patient-facing roles whilst they await termination of employment. If redeployment is not available individuals should be placed on leave from 1 April 2022 until termination takes effect.

Payment in lieu of notice (PILON) can only be applied in accordance with contractual arrangements or written particulars of employment.

Service contingency plans

During the grace period, as part of the implementation of the requirements, organisations should identify the potential for workforce capacity pressures, (alongside existing pressures e.g. due to staff absences), and the potential impact on service provision, and plan mitigating actions to ensure effective arrangements are in place to continue to deliver appropriate care to patients and service users.

Business as usual escalation routes apply for service disruption. Commissioners and systems should be informed of likely or actual service disruptions, which they can escalate to NHS England and NHS Improvement regional teams as needed.

Organisations must notify CQC (via email or using the on-line form) if they identify that they are unable to continue delivering activity safely⁵. Notification should take place if the registered provider has concerns that any event will prevent, or appears to the service provider to be likely to threaten to prevent, the service provider's ability to continue to carry on the regulated activity safely, or in accordance with the registration requirements, including an insufficient number of suitably qualified, skilled and experienced persons being employed for the purposes of carrying on the regulated activity.

Employers should continuously assess the impact of the regulations on recruitment and retention activity, patient care, staff health and wellbeing and their public sector equality duty.

Organisational support for staff

It is recognised that formal processes may be difficult and challenging for staff especially with regards to mental health, and as such, employers should provide staff with access to local staff support services such as occupational health, employee advisory services, psychological services, chaplaincy, and spiritual care.

NHS England provides a range of support resources available to staff which can be found [here](#).

⁵ [Events that stop a service running safely and properly – notification form | Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk/resources/guidance/service-providers/Events_that_stop_a_service_running_safely_and_properly_-_notification_form)

Resources

The Advisory, Conciliation and Arbitration Service (ACAS) has produced a range of guidance. This should be useful for employers when considering good employment practice as part of implementing vaccination as a condition of deployment.

- [Getting the coronavirus vaccine for work](#)
- [Advice on dismissals](#)
- [Disciplinary and grievance procedures](#)
- [Dealing with a problem raised by an employee](#)
- [Tailored support for your workplace](#)
- [Informing and consulting employees](#)
- [Notice periods](#)
- [Pay during the notice period](#)
- [Discrimination, bullying, and harassment](#)
- [Reasonable adjustments](#)
- [Hiring someone](#)