

To:

The Rt Hon Sajid Javid MP – Secretary of State for Health and Social Care, **Edward Argar MP** – Minister of State (Minister for Health), **Helen Whately MP** – Minister of State (Minister for Care), **Nadhim Zahawi MP** – Parliamentary Under Secretary of State (Minister for COVID Vaccine Deployment), **Sir Chris Wormald KCB** – Permanent Secretary
Ministerial Correspondence and Public Enquiries Unit
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

Mr Ian Trenholm – Chief Executive
Care Quality Commission
(All offices closed)
enquiries@cqc.org.uk

Prof Martin Green – Chief Executive
Care England
2nd Floor
40 Artillery Lane
London
E1 7LS

By: Registered post and email.

26 July 2021

RE: THE 'REQUIREMENT' FOR CARE WORKERS TO BE VACCINATED

Dear Sir / Madam,

Due to the unprecedented number of enquires from care workers concerned at the new requirement to be vaccinated or lose their jobs, we have referred to legislation to understand what the law provides.

This letter is a summary of the law and ought to be sufficient for you to understand the gravity and implications of the law.

And this is an open letter because the public will be interested to know that the statutory provision for care (and other) workers to be vaccinated is unenforceable.

That the statutory provision is unenforceable means that care (and other) workers,

1. that have been caused harm by 'complying' in anticipation of the provision, or
2. that are caused harm for not complying with the unenforceable provision,

may have cause to be compensated for any harms caused.

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021

Paragraph 5 amends the:

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

With regulation 12 which states,

“(3) For the purposes of paragraph (2)(h), a registered person (“A”) in respect of a regulated activity specified in paragraph 2 of Schedule 1 (accommodation for persons who require nursing or personal care) in a care home must secure that a person (“B”) does not enter the premises used by A unless—

(b) B has provided A with evidence that satisfies A that either—

(i) B has been vaccinated with the complete course of doses of an authorised vaccine...

(ii) ...”

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 has a parent Act, the Health and Social Care Act 2008.

Health and Social Care Act 2008

Section 129 amended the Public Health (Control of Disease) Act 1984 with sections 45C and 45E.

Public Health (Control of Disease) Act 1984

Section 45C states,

“Health protection regulations: domestic

(1) The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).

(3) Regulations under subsection (1) may in particular include provision—

(c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.”

Thus, regulation 12(3)(b)(i) imposes the requirement on care workers to vaccinate in accordance with the Public Health (Control of Disease) Act 1984 section 45C as provided by the Health and Social Care Act 2008.

However, section 45E states,

“Medical treatment

(1) Regulations under section 45B or 45C may not include provision requiring a person to undergo medical treatment.

(2) “Medical treatment” includes vaccination and other prophylactic treatment.”

Therefore, section 45E of the Public Health (Control of Disease) Act 1984 expressly overrides the regulation 12(3)(b)(i) requirement to vaccinate.

This means that regulation 12(3)(b)(i) is unenforceable because the provisions of an Act take precedence over the provisions of a regulation.

Clinical reasons for not vaccinating

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, regulation 12 also states,

“(3) For the purposes of paragraph (2)(h), a registered person (“A”) in respect of a regulated activity specified in paragraph 2 of Schedule 1 (accommodation for persons who require nursing or personal care) in a care home must secure that a person (“B”) does not enter the premises used by A unless—

(b) B has provided A with evidence that satisfies A that either—

(i) B has been vaccinated with the complete course of doses of an authorised vaccine; or

(ii) that for clinical reasons B should not be vaccinated with any authorised vaccine.”

At no time when the government explained its plans to vaccinate care (or other) workers do we recall the government tempering that advice by explaining that there would be valid clinical reasons for not being vaccinated as provided by regulation 12(3)(b)(ii).

Not tempering vaccination advice with the right to clinical exemption is at best disingenuous because media is awash with workers,

1. feeling coerced to vaccinate to save their jobs,
2. being harassed to vaccinate, and
3. leaving their jobs because they exercise their legal right to informed consent and decline to be vaccinated.

Doubtless a proportion of these workers will be clinically exempt.

This means that a proportion of workers will have been caused harm by,

1. coercion,
2. harassment, and
3. loss of income,

due to the failure of the government to advise workers that there would be a clinical exemption to being vaccinated (despite the fact the requirement was never going to be enforceable).

Next steps

We will of course be interested in your response.

However, whatever your response it will likely be moot because the Public Health (Control of Disease) Act 1984 which governs the control of infectious disease generally and specifically section 45E renders regulation 12(3)(b)(i) redundant and unenforceable.

We suggest that the Care Quality Commission must now immediately issue the instruction to care providers to stop telling workers they need to be vaccinated. Because they do not.

If you do not understand any aspect of this letter, we suggest you seek competent and independent legal advice.

Yours sincerely,



Edward Lowe LLB, LLM
Director

*Legal Advice Network are NOT solicitors or barristers. We do not perform Legal Services Act 2007 reserved legal activity.
We are a national legal advisory service that provides the public with low-cost jargon free legal advice and letters to help negotiate and resolve disputes.

References

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 paragraph 5;

<https://www.legislation.gov.uk/ukdsi/2021/9780348224993/contents>

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 regulation 12;

<https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/12>

Health and Social Care Act 2008 section 129;

<https://www.legislation.gov.uk/ukpga/2008/14/section/129>

Public Health (Control of Disease) Act 1984 sections 45C and 45E;

<https://www.legislation.gov.uk/ukpga/1984/22/section/45C>

<https://www.legislation.gov.uk/ukpga/1984/22/section/45E>