

BIG BROTHER WATCH

**Big Brother Watch Briefing on
the Health and Social Care Act
2008 (Regulated Activities)
(Amendment) (Coronavirus)
(No. 2) Regulations 2021**

December 2021

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to

inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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INTRODUCTION

Members of Parliament should vote against the introduction of mandatory vaccinations for health and social care staff.

- **Unnecessary** – vaccination uptake across the health and social care sector is extremely high, with 94% of NHS trust workers having been vaccinated. Targeted, supportive interventions have been highly effective to date. Abandoning this policy risks damaging public trust and dangerous staff shortages.
- **Ineffective** – vaccination prevents serious illness and death, but cannot prevent infection and transmission. A mandatory vaccination policy for staff would not prevent coronavirus circulating in health and care settings, but would undermine workers' rights and bodily autonomy.
- **Discriminatory** – vaccination hesitancy is higher in some religious groups, in black and black British adults, in more deprived areas and amongst young people. A mandatory vaccination policy will lead to these groups disproportionately facing unemployment.
- **Bodily autonomy** – these Regulations fundamentally undermine bodily autonomy for a large segment of the population. Medical decisions must be made freely, without legal compulsion or coercion.

Furthermore:

- The Regulatory Policy Committee found the Government's **Impact Assessment** for the Regulations is "**not fit for purpose.**"
- **65% of respondents to the Government's consultation did not support the proposal for mandatory vaccines.**¹ 80% of members of the public, 75% of current service users, 58% of healthcare workers, 56% of representatives of healthcare organisations and 50% of healthcare organisations opposed the plans.

Big Brother Watch, along with many rights groups and unions, opposes proposals for mandatory vaccinations.

Mandatory vaccine policies displace fundamental modern British values: individual autonomy, dignity, privacy and equality would be subsumed by coercion, state control, monitoring and discrimination.

¹ Making vaccination a condition of deployment in health and wider social care sector: Government response to public consultation – Department of Health and Social Care, GOV.UK, 9th November 2021 (p. 15): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf

This serious damage to British freedoms and workers' rights would provide little public health benefit and would likely damage trust in public health authorities among the groups where trust matters most.

EFFECT OF THE REGULATIONS

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021 bring into force the Government's announcement that those working in health and social care will be required to be fully vaccinated, or provide evidence of a clinical exemption, in order to retain their roles.

The main purpose of these Regulations is to expand the requirement to show proof of vaccination from those working in care homes, to all those undertaking "regulated activities".² "Regulated activities" are defined in the principle Regulations as those undertaken by healthcare professionals, including dentists, dental nurses, midwives, paramedics, radiographers, and carers, either in residential homes or private homes.³ They also apply to those providing services at substance misuse treatment accommodation, those involved in blood or tissue transfusion (where there is contact with a patient), medical practitioners providing advice or treatment at slimming clinics, and other Care Quality Commission regulated services that involve contact with a patient or service user.

The Secretary of State is required to review whether "the extent to which those objectives are achieved, taking into account clinical advice, and availability and accessibility of authorised vaccines" and to "assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation."⁴

The Government's public consultation on the introduction of mandatory Covid-19 vaccination for all health and social care workers found that **a majority of 65% of respondents did not support the proposal.**⁵ 80% of members of the public, 75% of current service users (or friends or families of service users), 58% of healthcare workers, 56% of representatives of healthcare organisations and 50% of healthcare organisations who responded to the survey did not support the policy.

² The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2021, reg 4(2)

³ The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, sch 1

⁴ Regulation 5(2)

⁵ Making vaccination a condition of deployment in health and wider social care sector: Government response to public consultation – Department of Health and Social Care, GOV.UK, 9th November 2021 (p. 15): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032203/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector-government-response.pdf

UNNECESSARY

Covid-19 vaccination uptake is extremely high across England, with over 90% of adults having been vaccinated and 89% of all those over 12 years old. 95% of the population have antibodies to Covid-19. Given the prevalence of Covid-19 infections in hospitals and across care settings, it is likely that many of those working in the health and social care sector will have some level of natural immunity.

Vaccine uptake is particularly high amongst NHS staff. **As of 9th December, NHS England reports that 94% of NHS trust workers have been vaccinated against Covid-19 and 91% have received two doses.**⁶ It is likely that the real figures are higher, as the UK Health Security Agency noted “where Trusts have an incomplete record of the vaccination status of their frontline staff, the vaccine uptake may be an underestimate.”⁷

As of 9th December, across the different regions of England, all NHS trusts reported high vaccine uptake amongst workers. Every region except London reported 93% or higher uptake of vaccination, with the North East and Yorkshire, South East and South West regions all reporting 95% vaccine uptake.⁸ NHS trusts in London have a slightly lower vaccine uptake rate of 89%. **A targeted approach, focusing on education, encouragement and facilitating vaccination, with a focus on London-based NHS trusts, would be a less intrusive approach than mandating vaccination for all health and social care workers.**

Indeed, unions have previously highlighted a range of measures that they believe would be more effective than vaccine mandates, such as further education, dispelling myths, making vaccination easily available and supporting staff.⁹ The Regulatory Policy Committee, the ‘better regulation’ watchdog that scrutinises Impact Assessments, found that the Government’s Impact Assessment for the Regulations “does not include appropriate consideration of mitigation alternatives” to mandatory vaccination, such as regular testing “as an alternative to vaccination and as a check on the risks posed by waning vaccination immunity.”¹⁰

⁶ COVID-19 weekly announced vaccinations 9 December 2021 – NHS England, 9th December 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/12/COVID-19-weekly-announced-vaccinations-09-December-2021.xlsx>

⁷ COVID-19 vaccine uptake in healthcare workers: explainer – UK Health Security Agency, GOV.UK, 7th October 2021: <https://www.gov.uk/government/publications/covid-19-vaccine-uptake-in-healthcare-workers/covid-19-vaccine-uptake-in-healthcare-workers-explainer>

⁸ COVID-19 weekly announced vaccinations 14 October 2021 – NHS England, 14th October 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/10/COVID-19-weekly-announced-vaccinations-14-October-2021.xlsx>

⁹ Unions attack ‘sinister’ plan to force NHS staff to have Covid vaccine—Denis Campbell, Robert Booth and Aubrey Allegretti, the Guardian, 3rd March 2021: <https://www.theguardian.com/society/2021/mar/03/unions-attack-sinister-plan-to-force-nhs-staff-to-have-covid-vaccine>

¹⁰ COVID-19 Vaccination as a Condition of Deployment: RPC Opinion – Regulatory Policy Committee, GOV.UK, 29th November 2021: <https://www.gov.uk/government/publications/covid-19-vaccination-as-a-condition-of-deployment-rpc-opinion>

Unions and organisations representing health and social care workers have also branded the mandate as unnecessary. Matthew Taylor, the chief executive of the NHS Confederation said of the proposed mandate that there was “no necessity for compulsion, for surveillance of people at this stage, because the staff themselves are doing the right thing.”¹¹ UNISON head of health Sara Gorton said:

“This wasn’t something the government needed to do. The effective and supportive approach taken by NHS trusts has persuaded the overwhelming majority of health staff to have both Covid shots.

“Now this sledgehammer approach risks doing more harm than good. Without knowing what proportion of staff are covered by exemptions, creating a new law seems extreme.”¹²

The UK has one of the highest levels of trust in vaccinations in the world.¹³ Abandoning the consensual approach whereby individuals are empowered to make their own choices about their healthcare for a section of the public is be misguided.

INEFFECTIVE

While vaccination is extremely effective at preventing serious illness and death from Covid-19, it does not prevent infection and transmission. **Vaccination status primarily tells the individual about their own risk of illness from the virus**, not whether they pose a risk to others. Research from Oxford University found that peak viral load of the Delta strain of the virus is similar in unvaccinated people as it is in vaccinated people, meaning there is a similar risk in an infected vaccinated person spreading the virus as an infected unvaccinated person.¹⁴ This is borne out by statistics published by the UK Health Security Agency, who have consistently found similar (or higher) rates of Covid-19 infections in vaccinated people as in unvaccinated people.¹⁵

It is illogical to impose a vaccine requirement on health workers who work in environments where patients and visitors do not have such requirements. The main

¹¹ Mandatory Covid vaccines for NHS workers are unnecessary ‘surveillance’, warns NHS boss – Sophie Barnes, the Telegraph, 5th September 2021: <https://www.telegraph.co.uk/news/2021/09/05/mandatory-covid-vaccines-nhs-workers-unnecessary-surveillance/>

¹² Forced jab rule in the NHS risks doing more harm than good – UNISON, 9th November 2021: <https://www.unison.org.uk/news/press-release/2021/11/forced-jab-rule-in-the-nhs-risks-doing-more-harm-than-good/>

¹³ Global vaccine trust rising, but France, Japan, others sceptical – Reuters, 4th February 2021: <https://www.reuters.com/article/health-coronavirus-vaccines-confidence-idINKBN2A408J>

¹⁴ Impact of Delta on viral burden and vaccine effectiveness against new SARS-CoV-2 infections in the UK – Pouwels et al, The National Institute for Health Research Health Protection Research Unit in Healthcare Associated Infections and Antimicrobial Resistance at the University of Oxford: <https://www.ndm.ox.ac.uk/files/coronavirus/covid-19-infection-survey/finalfinalcombinedve20210816.pdf>

¹⁵ COVID-19 vaccine surveillance report: 9 December 2021 (week 49)- UK Health Security Agency, GOV.UK, 9th December 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039677/Vaccine_surveillance_report_-_week_49.pdf

impact will be to exclude and alienate the small minority on staff who are currently unvaccinated, resulting in a less safe rather than more safe environment.

The vaccine requirement is likely to change and extend over time. This is particularly the case with the emergence of the Omicron variant, which requires a booster vaccine for effective protection – UKHSA data indicates double vaccination has low (Pfizer) to no (AstraZeneca) efficacy against infection.¹⁶

BODILY AUTONOMY

Mandating vaccination poses a serious threat to the principle of personal and bodily autonomy and will lead to discrimination and the widening of inequalities.

Personal and bodily autonomy are key rights and a principle of individual liberty. These Regulations would make an individual's employment contingent on a medical procedure. **A choice between a mandatory medical intervention and unemployment is no choice at all for many,** particularly low paid workers. Health and care sector workers, who have been at the front line of the coronavirus pandemic, should not be made to choose between their livelihoods and their right to make decisions about their bodies.

Given the roll-out of 'booster' vaccinations to ensure ongoing immunity, these Regulations pave the way for a continuous intrusion in bodily autonomy, with those working in health and social care forced to receive regular medical procedures in order to retain their employment.

Forcing rather than supporting workers to make such a choice will lead to an already struggling health and social care sector losing even more of its workforce. The Regulatory Policy Committee found the Government's Impact Assessment for the Regulations had not meaningfully considered the impact the Regulations would have on staffing, finding it " **not fit for purpose .** "

"does not provide the level of economic evidence for the calculation of direct impacts and the consideration of the impacts on small and micro businesses which are usually included in IAs [Impact Assessments] deemed fit for purpose.

"The IA does not provide evidence that excluding unvaccinated staff from health and care services will not result in critical staffing shortfalls, or sufficient evidence that such shortfalls could be avoided."¹⁷

16 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040076/Technical_Briefing_31.pdf

17 COVID-19 Vaccination as a Condition of Deployment: RPC Opinion – Regulatory Policy Committee, GOV.UK, 29th November 2021: <https://www.gov.uk/government/publications/covid-19-vaccination-as-a-condition-of-deployment-rpc-opinion>

Chris Hopson, chief executive of NHS Providers which represents England's NHS trusts, risked that staff shortages could be a "real problem" and that "we understand why people are vaccine-hesitant. We need to win the argument with them rather than beat them around the head."¹⁸ Indeed, recent research cited by the British Medical Association found that "pressurising health and social care workers can have damaging effects, leading to an erosion of trust, worsening concerns about the vaccine and hardened stances on declining vaccination."¹⁹

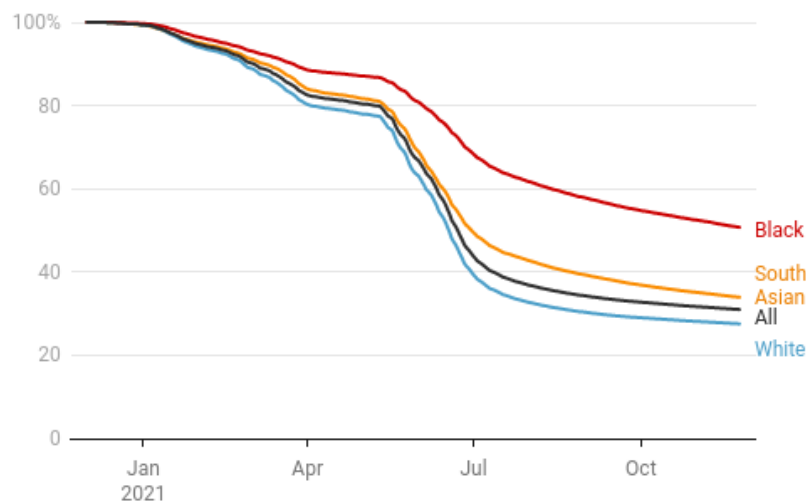
Using legislation to enforce vaccination for all health and care sector workers is a blunt, coercive approach to a complex, concentrated issue and could further undermine trust.

DISCRIMINATORY

The effect of these Regulations will be to force individuals, in many cases some of society's most marginalised, to choose between a medical procedure and their livelihood. **Given that vaccine uptake is lower amongst black and South Asian people, younger people and poorer people, these groups will be disproportionately impacted** (see graphs below).

Percentage of under 40s not vaccinated, by ethnicity

Black: 51%, South Asian: 34%, White: 28%



*Within the 23.4m patients analysed by OpenSAFELY (using NHS data).
 Figures to 24 Nov, published 8 Dec.*

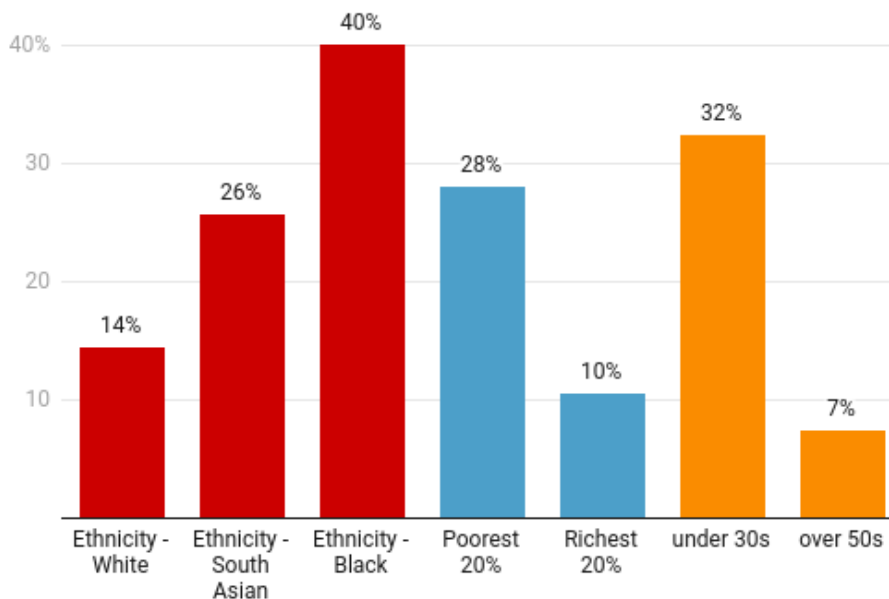
Chart: The Spectator (XHvCZ) • Source: [OpenSAFELY](#) • [Get the data](#) • Created with [Datawrapper](#)

¹⁸ Covid-19: Vaccines to be compulsory for frontline NHS staff in England – Joseph Lee and Marie Jackson, BBC News, 10th November 2021: <https://www.bbc.co.uk/news/health-59215282>

¹⁹ Mandatory vaccination for NHS staff is incredibly complex issue, says BMA – BMA, 16th June 2021: <https://www.bma.org.uk/bma-media-centre/mandatory-vaccination-for-nhs-staff-is-incredibly-complex-issue-says-bma>

The unvaccinated

Data for over-18 ethnicity, age and wealth as of 24 Nov



Within the 23.4m patients analysed by OpenSAFELY (using NHS data). Percentage may be an underestimate due to differing population estimates

Chart: The Spectator (iH4kA) • Source: [OpenSAFELY](#) • [Get the data](#) • Created with [Datawrapper](#)

Furthermore, Black/African/Caribbean/black British responders to the Government’s consultation on the policy were the least supportive of the mandatory vaccine policy of all ethnic groups, at just 11%. The Equality Impact Assessment noted that “many respondents suggested that people of ethnic minorities would be a particular group that would be negatively impacted by the requirement.”²⁰

People with certain religious beliefs are also likely to be disproportionately impacted, as Muslim and Buddhist responders to the Government’s consultation were the most opposed to the policy.

The discriminatory impact of these Regulations is acknowledged but brushed aside in the Government’s Equality Impact Assessment: “young people (...) ethnic minority staff and adherents to certain religions and beliefs are likely to be significantly impacted by this policy.”²¹

²⁰ Making vaccination a condition of deployment in health and wider social care settings- Equality Impact Assessment – Department of Health and Social Care, GOV.UK. 9th November 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032170/making-vaccination-a-condition-of-deployment-in-health-and-wider-social-care-settings-equality-impact-assessment.pdf

²¹ Ibid.

CONCLUSION

Mandatory vaccines were abandoned in Victorian Britain after sparking an anti-vaccination movement, mass protests and social discord.

With opposition to mandatory vaccines from unions, civil liberties groups, and hundreds of thousands of members of the public, mandatory vaccine policies are destined to reignite distrust at a time when distrust could cost lives.

These Regulations pose unacceptable risks to rights and individual liberties and could jeopardise national trust in the safety of vaccinations.

Members of Parliament should vote against these unnecessary and discriminatory Regulations.