

PANDEMIC INFLUENZA: ADDITIONAL MEASURES TO MEET WORKFORCE SUPPLY



This document has been prepared to complement existing guidance provided by the Department of Health and NHS Employers in relation to pandemic influenza planning. It answers the frequently asked questions and, wherever possible, directs readers to more substantive guidance already in existence.

Both the [Department of Health](#) and [NHS Employers](#) websites have extensive guidance that has been prepared to assist employers, practitioners, and members of the public.

The Government and the NHS have been working with employers, regulatory bodies and trades unions to ensure that, if there may be an urgent need to recruit additional temporary staff, the necessary legislative and practical arrangements are in place. This document summarises the agreed arrangements on issues such as re-registration, professional indemnity and pre-employment checks. This will enable local employers to quickly recruit appropriately qualified health professionals if they should be needed.

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Indemnity Issues

1. Q: Will those returning to work to be directly employed by an NHS employer (either paid or as a volunteer) be indemnified?

There is existing guidance on this provided by:

[NHS Employers in “Pandemic influenza: Human Resources Guidance for the NHS” \(see paras 3.12-3.13\):](#)

and the [NHS Litigation Authority](#),

These pieces of guidance make it clear that in order for a returnee to work or volunteer (paid or unpaid) to be indemnified by an NHS employer both parties must ensure that there is a suitable contract in place which contains provisions regarding indemnity.

Sample contracts for this purpose which contain provisions regarding indemnity, for issue to paid and unpaid temporary volunteer staff, are available to download from the NHS Employers website at:

[Flexible Worker Contract of Engagement \(paid\)](#)

(See NHS Employers in “Pandemic influenza: Human Resources Guidance for the NHS” - Annex B - pg. 40 onwards)

[Agreement for Volunteers during a Pandemic Influenza Outbreak \(unpaid\)](#)

(Of course, if a person is taking up employment in the ordinary manner then they would be covered under the usual terms and conditions for NHS employees).

Where a person volunteers, returns to work, or currently works for a body that contracts with the NHS to provide services (for example a GP, member of the primary care team, a community pharmacist or member of the community pharmacy team) further guidance regarding indemnity is currently being prepared and agreed.

2. Q: Will existing staff, directly employed by NHS bodies, still be covered by employer indemnity arrangements, even if they are redeployed away from their normal place of work in order to maintain a service?

Yes. Employees directly employed by the NHS, acting in the course of their employment, are covered by their employer’s indemnity, regardless of their actual work location. As long as a contract of employment is in place, staff will be indemnified - even if they are working on a different site or undertaking a different role that they are, and have been deemed competent, to carry out. Where secondments are in operation, the secondee will be covered by either the host organisation or the donor organisation – the detail of which indemnity is applied should be agreed in advance by those organisations. This should be straightforward where donor and host organisation are within the NHS. But where an NHS employee is seconded to a host organisation outside of the NHS, the terms of the secondment may not preserve the employee’s NHS cover. Depending on the arrangements for the secondment, an NHS employee seconded to a host organisation outside the NHS may instead be covered by that host organisation’s indemnity, in which case careful attention must be paid to whether cover corresponds sufficiently closely with cover under the NHS employer’s indemnity.

3. Q: Will staff still be covered if they are directly employed by NHS bodies, but carrying out duties outside of their usual job role?

Yes, providing they are acting in the course of their employment. Where working outside of their usual job role the risks of a healthcare professional or NHS provider being sued are the same as they would be at any other time. The key factors to consider are that health care professionals should, at all times:

- act reasonably, and
- ensure they are competent to carry out any practice requested of them.

[NHS Employers' guidance](#) outlines the principles which should be observed when asking staff to work outside of their usual role (see paras 3.12-3.15). These emphasise the need for employers to ensure that adequate training and supervision is given to staff, and that staff are competent to act before duties are delegated to them.

4. Q: What guidance is available to statutorily regulated health professionals on how they should act during a pandemic?

Some of the [health professional Regulatory Bodies](#) have also issued guidance (see below) to their registrants. In general this guidance reminds registrants that they are accountable for their actions and need to assure themselves that they are operating safely within their scope of practice. The guidance also notes that, where staff are asked to work outside of their scope of practice by employers, they should be mindful of their duty of care to patients and the public.

The following regulatory bodies have produced guidance for their registrants on their professional responsibilities during a pandemic:

[The General Medical Council](#)

[The Nursing and Midwifery Council](#)

[The Royal Pharmaceutical Society of Great Britain](#)

[The Health Professions Council](#)

[The General Dental Council](#)

Re-registration of statutorily regulated health professionals

5. Q: What arrangements are in place if additional doctors need to be recruited quickly?

Legislation¹ was made last year enabling the General Medical Council (GMC) to register medical practitioners temporarily in circumstances connected with a possible emergency situation. By virtue of this, the GMC may maintain a special doctors list of persons whom the GMC will register temporarily in such a situation.

Registration will be at the discretion of the GMCs Registrar, who will be able to attach conditions to the doctors' registration and, if necessary and appropriate, remove doctors from the list without going through the normal fitness to practise procedures.

These powers can be utilised where the Secretary of State notifies the GMC that an emergency (which for these purposes, means a public health emergency) is occurring, has occurred or is about to occur and that action should be considered under the relevant provision enabling the

¹ Changes to existing legislation made by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 SI 2008/1774

emergency registration of doctors. It is for the Secretary of State to determine whether such temporary registrations should be considered; and for the Registrar to determine whether he will in fact register any additional practitioners in the register. The powers cease to have force when the Registrar is notified by the Secretary of State that the circumstances that led to his asking the Registrar to consider temporary registration under these powers no longer exist.

6. Q: How will these powers be used in practice, if needed?

The GMC have developed proposals on how their temporary powers for registration will be exercised. Doctors would only be eligible if they have been previously registered with the GMC, or are currently registered with another medical regulator overseas and there are no concerns regarding their fitness to practise.

The trigger for temporary registration in circumstances of a public health emergency (or an imminent one) would be a communication from the Secretary of State that such an emergency is occurring, has occurred or is about to occur and that action under the relevant powers should be considered by the GMC. The GMC will then add doctors to their register and would notify the relevant doctors that this step has been taken. The GMC will adopt a phased approach to 're-registration' (e.g. the most recently voluntarily erased doctors will be added to the register first). The GMC indicate that this process could be completed within 48 hours.

This notification will remind doctors of the need to act within the terms of their competence during a pandemic (GMC have prepared a pandemic flu edition of their guidance [Good Medical Practice](#) to supplement this). The notification will encourage doctors to offer their service but they would not be compelled to do so. There will be no charge for temporary registration.

Those not wishing to operate as a doctor, or to whom temporary registration is not issued, should not hold themselves out to be registered practitioners (or undertake any activity reserved to registered medical practitioners) but may be able to volunteer to work in other capacities.

7. Q: What arrangements are in place if additional GPs are required urgently?

The Department of Health in England is currently considering whether amendments are required to Performer List regulations to enable former GPs to return to practice quickly, and will be liaising with stakeholders shortly on this before issuing further specific guidance.

8. Q: What is the position regarding pharmacists?

Legislation² was made giving the Registrar of the Royal Pharmaceutical Society of Great Britain (RPSGB) powers to temporarily register, in the practising part of their register, fit, proper and suitably experienced people to act as pharmacists to ensure sufficient supply of suitably qualified staff if an emergency is occurring, has occurred or is about to occur. The RPSGB was also given powers, in the same circumstances, to annotate pharmacists' registration entries to give them additional prescribing powers. There will be no charge for temporary registration.

The Registrar can attach conditions to the registration of those temporarily registered under these contingency arrangements, and may remove both temporary registrations and temporary annotations at any time, without going through the normal fitness to practise procedures.

The powers can be utilised where the Secretary of State notifies the RPSGB that a possible emergency (which for these purposes, means a public health emergency) is occurring, has occurred or is about to occur and that action should be considered under the relevant provision. It is for the Secretary of State to determine whether additional registration should be considered;

² Changes to existing legislation made by the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 SI 2009/1182

and for the Society to determine whether it will in fact register any additional people in the practising part of its register. The powers cease to have force when the Registrar is notified by the Secretary of State that the circumstances that led to the Secretary of State asking the Registrar to consider registering additional practising pharmacists no longer exist.

Under the RPSGB's code of practice, pharmacists returning to practice will need to have indemnity cover. There are two routes to achieve this: indemnity cover through the usual pharmacy insurers or employment of the pharmacists under a contract with an NHS body, which will give access to NHS indemnity. Primary Care Trusts (PCTs) will need to discuss the options with the pharmacists concerned, as well as taking a view on the basis of how they will be deployed across the PCT.

9. Q: How will these powers be used in practice, if needed?

The RPSGB has maintained a non-practising register. Its first action has been to alert those on the non-practising part of the register that their services may be required in a situation such as a pandemic, and that they may be transferred to the practising side of the register.

The RPSGB wrote, in July 2009, alerting non-practising registrants to the plans reminds pharmacists of the need to act within their terms of their competence. The notification has encouraged pharmacists to offer their service but does not compel them to.

10. Q: What legal provisions have been made regarding nurses?

Legislation³ was made last year to enable the Nursing and Midwifery Council (NMC) to make temporary annotations to its register to enable fit, proper and suitably experienced registrants to order drugs, medicines and appliances that they would not otherwise be able to order. The annotations will give them prescribing powers under medicines legislation in relation to most prescription only medicines.

These contingency powers can be utilised where the Secretary of State advises the Registrar that an emergency has occurred, is occurring or is about to occur and that action should be considered under the relevant provision. The powers cease to have force when the Secretary of State notifies the Registrar the circumstances that led to the Secretary of State giving such advice no longer exist.

11. Q: What arrangements are in place if additional nurses need to be recruited quickly?

The NMC has issued [guidance](#) to those wishing to offer their services in times of pandemic. From 17 September, the NMC will write to over 90,000 nurses and midwives whose registration has lapsed within the previous 4 years encouraging them to apply for readmission to the register and so make themselves available to employers.

What the NMC will expect for readmission is that a person must have:

- worked as a nurse or a midwife during the previous five years for a minimum of 750 hours and;
- undertaken and recorded 35 hours of continuing professional development in the last three years.

The NMC will recommend that nurses and midwives contact their last known employer before making a decision about applying for readmission to the register. The employer can decide if they are interested in utilising them to support any possible staff shortages. The NMC will also

³ Changes to existing legislation made by the Nursing and Midwifery (Amendment) Order 2008 SI 2008/1485

ask midwives to contact a supervisor of midwives to confirm they are willing to support their intention to return to midwifery.

Nurses or midwives not meeting these requirements cannot be readmitted to the register without first completing a return to practise (RTP) programme. Education institutions providing these courses are listed on the NMC website in the Education and Quality Assurance section. The NMCs minimum period for a return to practice programme is five days. The NMC have written to all of their approved programme providers, stating that the NMC will support any programme provider in partnership with commissioner(s) and/or Local Supervising Authorities, wishing to shorten the length of the RTP programme. NMC approved programme providers will still need to confirm that nurses and midwives have met all the requirements for returning to practice.

12. Q: Can other staff groups re-register with their professional regulator in times where staff shortages are occurring?

Specific powers of re-registration for use in a situation such as pandemic flu have not been introduced for other statutorily regulated health professions. However, those who may wish to re-register to assist can apply to be readmitted.

For instance, individuals who were regulated by Health Professions Council in the past (for instance paramedics and physiotherapists), and who may wish to be re-registered to assist can apply for 'readmission' to the HPC Register. If an individual was previously registered with HPC but had not practised (in the UK or elsewhere) in the last two years then they would need to meet the HPCs standards set out in its guidance: "[Returners to practice](#)".

13. Q: What if I am not, or was not, a statutorily regulated health professional – can I still help out?

In these circumstances, especially if you have relevant skills (e.g. first aid proficiency, etc), your services may be useful to an NHS employer. If you would like to offer your services then you should contact your local NHS employer to volunteer your services.

Pre Employment Checks

14. Q: Do employers continue to need to carry out pre-employment checks?

In times of staff shortage there is the likelihood that employers may need to engage replacement/support staff at short notice. Employers are reminded to consult the [existing advice](#) that has been published by NHS Employers in terms of NHS Employment Check Standards.

Employment checks exist to protect the public and so any change of requirements, even during a pandemic, would require careful thought and justification from employers. Therefore, it is important that the level and degree of checks carried out should be proportionate to the level of risk or opportunity to cause harm or damage, the position being applied for may represent.

Both the Department and NHS Employers have been working closely with the Criminal Records Bureau (CRB) in particular, and are satisfied that robust plans are in place to cope with demand in times of pandemic. NHS Employers have also issued further advice to employers on [pandemic flu and CRB](#).

Employers are reminded that they can undertake risk assessments and employ staff under supervision until the CRB disclosure has been received, though, in so doing, the employer retains the risk should an adverse incident occur.

At the present time the Department of Health does not believe that there is any justification for waving any of the employment check safeguards currently in place. Should this position change further notifications and advice will follow.

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