



COVID-19 – Care Homes – New regulations

6th October 2021 – Issue 1

Guidance for Fire and Rescue Services undertaking regulated activities in care homes under the Regulatory Reform (Fire Safety) Order 2005

1. Introduction

- 1.1 On 22nd July 2021 the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 (HSCACR) were made. These regulations will come into force on 11th November 2021.
- 1.2 This document provides an overview of these regulations and offers practical advice for FRSs when they are planning and carrying out their regulatory activities as the enforcing authority under the Regulatory Reform (Fire Safety) Order 2005 (FSO) as the COVID-19 pandemic restrictions are eased.
- 1.3 The guidance primarily covers care homes as defined in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, however, it could be applicable in part or whole to other social care settings and activities.
- 1.4 This guidance¹ provides advice to Fire and Rescue Services (FRSs), when planning for, and undertaking their regulatory activities under the Regulatory Reform (Fire Safety) Order 2005 (FSO) in environments where COVID-19 restrictions or limitations are present.
- 1.5 The advice offered in this guidance forms part of the wider material which has already been made available on the NFCC COVID page. As with those documents, this guidance will be reviewed and amended as necessary by the NFCC Protection Policy and Reform Unit (PPRU).
- 1.6 Many of the COVID response restrictions that were in place previously have now been removed. Nonetheless, the general approach which FRSs should be undertaking as the COVID pandemic continues, remains unchanged from that set out by the Strategic Intentions document which states that:

“Services should adopt a risk-based approach to undertaking auditing and other Protection activities. Carrying out duties under the Regulatory Reform (Fire Safety)

¹ The purpose of this non-statutory guidance is to provide fire and rescue services with general advice to assist with a consistent, standardised approach across all services. The guidance does not constitute legal advice. Fire and rescue services' legal duties will remain those specified by law, in particular article 26 of the Regulatory Reform (Fire Safety) Order 2005, during the COVID-19 pandemic, but if any fire and rescue services consider that difficulties arise in relation to compliance with those duties, they should take legal advice.

Order 2005 (FSO) should take place with due regard for the need to protect your staff and the public from exposure to COVID-19.”

1.7 This is the first issue of this guidance and does not supersede any previous guidance.

2. New Regulations Overview

2.1 The new regulations apply to England only.

2.2 They amend the existing Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which prescribe the kinds of activities that are regulated activities under the parent legislation, the Health and Social Care Act 2008. They also outline the way those activities should take place.

2.3 Health care providers must comply with these regulations in order to be registered with the Care Quality Commission (CQC)².

2.4 The new regulations place new requirements on the ‘registered person’. This is the person who is the service provider or a registered manager. In real terms, this is likely to be the care home manager.

2.5 The new regulations require the registered person to ensure that any person, who is not a resident, entering the premises, can only do so if they have been fully vaccinated, unless that person cannot be vaccinated for clinical reasons.

2.6 Exceptions to this of specific note to FRS are:

2.6.1. FRS persons are attending in execution of their duties as a member of the emergency services³.

2.6.2. It is reasonably necessary for FRS persons to provide emergency assistance at the premises (although this exemption is not specific to FRS).

2.7 Evidence of COVID vaccination status can be demonstrated by either a personal NHS COVID Pass Letter, the NHS App or the NHS Website. However, the clause outlined in 2.6.1 makes it clear that FRS staff should not be obstructed due to being unable to demonstrate their Covid Vaccination status when entering a care home in pursuance of their duties.

2.8 It should be noted that the legal responsibility for admitting any person who is not a resident lies with the regulated person (care home manager) and not the FRS. Fire Safety Regulators (Inspecting officers) have separate legal powers of entry under the Article 27 of the FSO.

3. Considerations for deployment of FRS staff attending care homes

3.1 None of the considerations in this section override the exclusions laid out in the new regulations.

3.2 While the FSO means that FRS can legally enter care homes regardless of the vaccination status of their staff, FRS can contribute to the reduction of COVID

² The Care Quality Commission are the independent regulator of health and social care in England.

³ This clause is inserted as Regulation 12(3)(e) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

transmission by ensuring, wherever possible, that **only** vaccinated staff attend premises with vulnerable occupiers such as care homes.

- 3.3 FRS will have their own protocols for gathering information on their staff's vaccination status. These protocols are outside the scope of this guidance however, where such data is held, it can be used to coordinate the allocation of personnel, if required.
- 3.4 FRS should work with the registered person to make clear what their respective expectations and requirements are when visits, audits or other activities need to be carried out.
- 3.5 It may be beneficial for FRS to develop their own processes for dealing with Protection activities in care homes. While it is not possible to take into account every circumstance, it is reasonable to split Protection activity in care homes into two, as outlined in 3.7 and 3.8 below.
- 3.6 A hierarchical approach can be taken to staff allocation in these circumstances depending on the risk levels concerns, which can then be discussed with registered persons and demonstrates the proportionate approach to risk being undertaken by the FRS.

3.7 Urgent Visits

3.7.1. An urgent visit may be required because:

- a. A fire safety complaint or concern has been made which may compromise the safety of relevant persons.
- b. A visit to serve a notice or undertake a follow up visit at a premises where a notice has been served.

3.7.2. It may not be possible to allocate staff depending on their vaccination status for urgent visits. They should always be competent to fulfil the task required.

3.7.3. There should be consideration for attending staff, whether vaccinated or not, to complete a lateral flow test before attending, where this is reasonable.

3.7.4. If it is not possible for vaccinated personnel to attend, the registered person should be informed of this so that they may make any appropriate arrangements while not unduly delaying the inspection activity

3.7.5. Where the attending person is not vaccinated, their visit should be limited by time and extent to the matter for which the visit was intended. Any wider inspection activity should be deferred until a vaccinated member of staff can attend.

3.7.6. There is a range of PPE that can be used by staff to provide protection to themselves and other relevant persons and this should be used in consultation with the FRS policies and the registered person.

3.8 Non-Urgent Visits

3.8.1. Non urgent visits may typically involve:

- a. Audits generated by the normal RBIP process. Audits for premises which are overdue an inspection, or have a history of non-compliance should be given priority
- b. Follow-ups of non-urgent work in premises where notices have not been served but may have been subject to action plans or similar agreements.
- c. General fire safety queries from the registered person, residents of the care home or others which on investigation, require a physical visit to deal with.

3.8.2. Where the visit is not time critical, it may be possible to ensure, where the staff and information are available, that those chosen to attend have been vaccinated.

3.8.3. Where this is not possible then the steps outlined in section 3.7.3 to section 3.7.6, above, should be followed.

3.8.4. FRS can use their websites or the letters they send to arrange audits, for example, to outline their approach to undertaking visits in care homes so that the expectations of the RP can be set but also allow the discussion of any requirements to be started.

3.9 The NFCC COVID-19 Strategic Intentions document outlines a range of additional methods to allow FRS to interact with premises which may have occupants who are vulnerable. Further information can be found in Section 7 of that document.⁴

4. Risks posed by care homes

- 4.1 The risks posed by care homes in terms of the risk to relevant persons from fire are well known by FRS.
- 4.2 RPs should have followed the guidance available from the government, CQC, NFCC and FRS during the pandemic to keep relevant persons safe despite any restrictions that may have been in force.
- 4.3 FRS should be mindful that care homes have been under strain trying to balance their priorities and that fire safety may, in some cases, have dropped down the priority list.
- 4.4 The requirements introduced by the new regulations apply to staff and it is expected that care home staffing levels may reduce as a result. This, in addition to existing staff shortages, may result in situations where the ability to maintain adequate protective and preventative measures cannot be achieved. Adequate staffing levels and staff training will be especially relevant in terms of evacuation management, (for example where agency staff are routinely used).
- 4.5 There should be discussions with the Responsible Person at an early point to see how they are planning to deal with future issues such as this and how it will be reflected in their fire risk assessment.

⁴ This is part of the NFCC suite of COVID related documentation and can be found at <https://www.nationalfirechiefs.org.uk/COVID-19>

5. Sharing Information with Others

- 5.1 The Protection department should inform other departments of any measures that have been agreed with the registered person, where they exist, pertaining to access to the premises and any additional protection required.
- 5.2 The Protection department should provide other relevant organisations with this information where it is lawful and appropriate to do so. Examples include the local authority emergency planning department, Local Authority Care Commissioners or the Local Resilience Forum.
- 5.3 The Protection department should make contact with their relevant operations colleagues to ensure relevant information is passed on which might assist staff who attend these premises types to be better prepared should there be questions regarding their vaccine status or where the lack of staff might affect operational decision making.
- 5.4 Prevention departments should be liaised with to allow them to consider if they should undertake any relevant activities as a result of the new regulations or where it is anticipated that there will be a shortage of staff.
- 5.5 FRS should consider what effective methods of communication with care homes might exist and how they can simultaneously gather information and inform them of the need to let the FRS know of any changes in their policies or where they anticipate issues. This should include involving their communications departments and other relevant partners.
- 5.6 The information exchange between departments should be reciprocal, meaning that information gathered, for example, by operational staff, should be fed back to Protection departments. This should be similarly expected where there is communication with external partners.

6. Application to other accommodation types

- 6.1 While the new regulations apply to specific accommodation types as defined within the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, there may be other settings where similar care is provided to vulnerable occupiers in similar accommodation types.
- 6.2 Fire safety regulators should engage with the Responsible Persons and staff of those premises, and where possible residents, to provide the same degree of consideration as suggested for care homes.

7. Long term considerations

- 7.1 The COVID-19 virus is expected to become endemic, meaning it will reach a stable and, hopefully, manageable level.
- 7.2 It is likely to always pose more of a risk to vulnerable groups. This may mean that certain regulated premises will always need to be treated in a way that manages that risk while also allowing proper regulation to take place.
- 7.3 FRS should undertake reviews of the effectiveness of their actions during the pandemic period, including the recovery roadmap. They should share any significant learnings with the NFCC PPRU and put plans in place to deal with similar events that may occur in the future.

8. Further information

- 8.1 The NFCC Protection Policy and Reform Unit want to hear from any services who are involved in these projects to share information and further inform best practice.
- 8.2 If you have any feedback or questions with regards to this document, please contact the PPRU using the email address below.

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