

DHSC Q&A BRP 22nd March 2021

1. A couple of people have asked if 21st June will mean the end of mask wearing and if firms will be able to unilaterally enforce mask wearing in their offices? Some members are trying to figure out if they will be allowed to require guests/visitors to wear masks.

Whether the face covering regs will continue beyond 21 June is currently under consideration and therefore the relevant policy or clinical colleagues cannot confirm this.

Businesses do have the right to an entry policy (which could include requiring the wearing of face coverings), but if how they operate their non-admittance policy is not objective and justified, they can be subject to legal challenge in respect of unlawful discrimination. However, there may be discrimination that is lawful, e.g., justified on the basis of the protection that they owe their staff and other customers.

This advice is very broad and will depend on the premise in question as some firms and offices will not be within scope of the face coverings regulations however, should the businesses which to operate a right to an entry policy as part of their covid-19 health and safety assessment (and duties under the Health & Safety at Work Act and as employers), the same principles would apply in relation to discrimination.

Further lines:

While any business has the right to an entry policy and can refuse entry, government regulations make it very clear that those who are exempt or have a reasonable excuse (e.g., due to a disability, health condition etc.) are not required by law to wear a face covering.

There are example exemption cards available to print or display on mobile phones from gov.uk: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own>, should people want to visibly show they have an exemption, or people are able to make their own exemption card if they would prefer or do not have access to the internet.

Government guidance is clear that people are also not required to prove they are exempt from wearing a face covering and it is for individuals to choose how they would want to communicate this to others. There is also no legal requirement under these regulations to prove you are exempt – this remains a personal choice for the exempt person.

The disability provisions in the Equality Act 2010 require providers of services and facilities to the public to make 'reasonable adjustments' so that disabled people are not placed at a "substantial disadvantage" compared to non-disabled people.

The reasonable adjustment duty is an anticipatory duty because it is owed to disabled people in general. This means that people who provide goods, services and facilities to members of the public are expected to anticipate the requirements of disabled customers and the adjustments that may have to be made for them.

In deciding whether permitting entry is a reasonable adjustment in any particular situation, a business will also need to consider carefully how this fits with its Covid-19 risk assessment, its general health and safety duties, and other obligations to staff arising from the law on employment rights and equalities law.

2. If a business is to properly implement LFT for employees, what frequency of testing is recommended?

Workers should get tested twice a week, even if they don't have symptoms. By regularly getting a test, both employers and workers will help to stop the spread of the virus, protecting other people and saving lives.

3. Is there a way to better advise on workplace testing and the 90 day effectiveness issue? Question from businesses is what do we do in this instance.

The online portal on Gov.UK makes it even easier for businesses to find out more about offering rapid workplace testing and order free tests. Businesses will be provided with all the information they need to plan and deliver their testing programme and can order tests through the portal.

4. In my workplace we are carrying out LFT every week for staff in manufacturing. Particular context for this, in construction we have lots of flow through the site and issues with people refusing tests or what to do if they tell us ref having been positive in past 90 days?

Following a home LFD positive test, people must self-isolate, and a confirmatory PCR test must be booked online or via 119. If the PCR test is positive, they must follow the standard self-isolation rules. If the PCR test is negative, it overrides the LFD test.

Anyone who has previously received a positive COVID-19 PCR test result should not be re-tested within 90 days of that test, unless they develop any new symptoms of COVID-19.

If, however, you do have an LFD antigen test within 90 days of a previous positive COVID-19 PCR test as part of workplace testing and the result of this test is positive, you and your household should self-isolate immediately.

5. What should smaller businesses do about LFT for employees? Are these available in ALL parts of the UK via EG local authorities?

All Local Authorities have also signed up to offer rapid lateral flow testing in the community through local asymptomatic test sites. Small businesses can direct workers to these test sites if they can't offer rapid workplace testing. Visit: <https://www.gov.uk/find-covid-19-lateral-flow-test-site>. Additionally, all businesses with workers in England who can't work from home can get involved with rapid workplace testing, whether they just have one office or want to set up testing at a number of sites.

6. Is it envisaged that *all* retail have QR codes etc in place once they reopen in April?

No, retail is not in scope of these Regulations and therefore not required to display an NHS QR code.

7. How do you intend to manage the check in for young children who don't have their own phone but are probably part of a family group?

Venues are not required to request anyone under the age of 16 to scan the NHS QR code or provide contact details.

8. What happens to the data over a period of time? i.e., is it retained indefinitely.

The data should be stored securely for 21 days and then destroyed.

9. Are the changes to require details of all customers to hospitality venues contained in regulations or guidance. How enforceable are they?

This amendment is reflected in the Regulations and guidance and is enforced using the same LA powers.