
Returning to the office – the “roadmap” out of lockdown in England and staff vaccination

This note is current as at 10am on 4 March 2021

In its “Covid-19 Response – Spring 2021” [roadmap out of lockdown](#), the Westminster Government has set out its four-step plan for a route back to a more normal life in England, ideally by late June 2021.

In this briefing note, we examine how this may translate into allowing employees to return to the office and resume business travel bearing in mind that, at the moment, the legislative changes required to implement the roadmap in practice have not yet been published, as well as what the Response has to say about so called COVID passports and the latest position on staff vaccination.

Current position

Under [The Health Protection \(Coronavirus, Restrictions\) \(No. 3\) and \(All Tiers\) \(England\) \(Amendment\) Regulations 2021](#), in England it is currently a **criminal offence**:

- **Restrictions on movement:** for a person to leave their home without “reasonable excuse”, which includes where it is “*reasonably necessary.... for the purposes of work...where it is not reasonably possible for the person to work...from home*” and where it is “*reasonably necessary... to avoid injury or illness or to escape a risk of harm*”.
- **Restrictions on gatherings:** for a person to participate in a gathering (indoors or outdoors) which consists of two or more people, unless one of the exceptions applies, which exceptions include where the gathering is “*reasonably necessary... for work purposes*” and where it is “*reasonably necessary ... to enable one or more persons in the gathering to avoid injury or to escape a risk of harm*”.

This [Government guidance](#) makes it clear that a person can only travel internationally (or within the UK) when they first have a legally permitted reason to leave home.

It is technically a criminal offence for a corporate entity to assist, encourage, aid or procure an employee to breach these rules.

COVID-19 Response – Spring 2021

The [COVID-19 Response – Spring 2021](#) published by the Westminster Government on Monday 22 February 2021 sets out four “Roadmap Steps” out of lockdown for the whole of England – progress through which is dependent on the Government’s assessments of “The Four Tests” – and has the following to say about returning to work and travel:

- **From 8 March (Step 1)**, as currently, *“people can leave home for work if they cannot work from home and to escape illness, injury or risk of harm, including domestic abuse”* and travel abroad *“for holidays”* will still not be permitted. Outbound travellers will be legally obliged to provide their reason for travel on the Declaration to Travel form.
- **From 29 March**, guidance will set out how people can see others safely, with the evidence being clear that this is safest to do in the open air and at a safe distance, with the frequency of gatherings and the numbers present minimised, whilst most people are still unprotected by vaccines. *“People will no longer be legally required to Stay at Home. Many of the lockdown restrictions, however, will remain in place. Unless an exemption already applies, it will not be possible to meet people from other households indoors and many business premises will remain shut. Guidance will set out that people should continue to work from home where they can. People should continue to minimise travel wherever possible, and should not be staying away from home overnight at this stage.”*
- **From no earlier than 12 April (Step 2)**, *“social contact rules in England will not change further at this point”*. Outdoor gatherings will still be limited to six people or two households and no indoor mixing will be allowed unless otherwise exempt. *“People should continue to work from home where they can, minimise domestic travel where they can. International holidays will still be prohibited.”*
- **From no earlier than 17 May (Step 3)**, the Government will *“further ease limits on social contact, enabling the public to make informed personal decisions. It will remain important for people to consider the risks for themselves, taking into account whether they and those they meet have been vaccinated or are at greater risk”*, and will lift most legal restrictions on gatherings of up to 30 people outdoors, but gatherings indoors will be limited to six people or two households *“though it may be possible to go further than this at Step 3 depending on the data”*. The Government will continue to *“advise people to work from home where they can”* and *“The Global Travel Taskforce will report on 12 April with recommendations aimed at facilitating a return to international travel as soon as possible while still managing the risk from imported cases and Variants of Concern. Following that, the Government will determine when international travel should resume, which will be no earlier than 17 May”*.
- **From no earlier than 21 June (Step 4)**, the Government aims to remove all legal limits on social contact.
- **Ahead of Step 4**, as more is understood about the impact of vaccines and more people have been vaccinated, the Government will complete a review of social distancing measures and other long-term measures that have been put in place to limit transmission, and the results of the review will help inform decisions on such measures may be lifted. This review will also inform guidance on working from home and *“people should continue to work from home where they can until this review is complete”*.

Implications for returning to the office and travel

In relation to returning to the office, the COVID-19 Response therefore indicates that, whilst the legal restrictions on movement will be removed from 29 March, the legal restrictions on gatherings will remain in place, with a notable emphasis being made on outdoor gatherings being safer. However, it is currently unclear whether and what point the Government might introduce an exception to the restrictions on gatherings for premises operated by a business (in a COVID-secure manner) like that which was in place over last summer (or something similar). The Response document says that from 29 March the Government’s *“guidance”* will be that people should continue to work from home where they can (and minimise travel where possible), and that from no earlier than 12 April no indoor mixing will be allowed

“unless otherwise exempt” – suggesting this could perhaps happen, and employers will be back in the position that they were in July 2020 (see our briefing note [here](#)), as early as 29 March? Although the review of social distancing measures is not due to take place until *“ahead of Step 4”*, such review is stated to be intended to inform the *“guidance”* on working from home only.

In relation to international business travel, the position seems more clear-cut, with an apparently categorical statement that it will not be resuming any earlier than 17 May. However, it remains to be seen how restrictions on international travel will be implemented legally, once the restrictions on movement from which they currently stem are removed.

Unfortunately, it is unlikely we'll have any more clarity until the new legislation is published, which may not be until towards the end of March.

Vaccinations and certification

The COVID-19 Response puts vaccinations *“at the heart”* of its strategy to manage the pandemic in the medium and long term. The Government is clearly encouraging as much vaccine uptake as possible, through local engagement via the NHS, local authorities and voluntary organisations. But the Government has stopped short at every stage so far from mandating vaccinations in the workplace and so this remains an uncertain and controversial area for employers. You can find our analysis of the lawfulness of compulsory vaccinations [here](#). Updates to the [Government's Working Safely guides](#) on 10 February 2021 also stated that employers should continue to follow the existing working safely guidance even if staff have had 1 or 2 doses of the vaccine or have had a recent negative test, so for the time being at least vaccinations (compulsory or otherwise) will not be a quick and easy single solution for businesses.

It is however notable from recent press reports that some NHS trusts and also care home providers are, for the first time, considering mandating vaccines for staff. This could pave the way for easier arguments by private businesses in some sectors that a requirement on staff to be vaccinated is reasonable and necessary as part of their ongoing health and safety duties (and therefore constitutes a reasonable management instruction), notwithstanding the exceptions that will need to be made for certain groups who cannot be vaccinated or who refuse for certain protected reasons. ACAS has recently produced [guidance on how to manage workplace vaccination issues](#) which may help employers frame their discussions

Alongside the tricky question of mandating vaccinations is the ongoing hot topic of so-called COVID passports. These had previously been ruled out by the Government, but the COVID-19 Response states that it will review whether “COVID Status Certifications” could assist in reopening the economy before 21 June 2021, when Step 4 (above) is anticipated. Recent press reports indicate that the UK Government is considering repurposing the NHS Track and Trace app for status certification and that the European Commission is considering a Europe-wide “digital vaccination certificate” which may remove the need for a negative test result when travelling internationally. It therefore appears increasingly likely that these will become a reality in some form.

It has also been reported that private services offering certifications or “passports” are being adopted by some UK businesses. These give rise to a number of legal and ethical questions, not least data privacy concerns arising from the collection and processing of health data, which is afforded special protections under data protection laws. Any decision by employers to implement such schemes (over and above any official Government programmes) as part of their COVID-19 management strategy will need careful planning and implementation to avoid the myriad risks and potential consequences. In the meantime, businesses should keep a close eye on the Government's guidance and possible policy shifts in this area.



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