

EMPLOYMENT

Northern Ireland update

– Roadmap out of the pandemic, vaccinations, and the Coronavirus Job Retention Scheme

On 13 May 2021, the Northern Ireland Executive (the **Executive**) issued its latest guidance for navigating the coronavirus pandemic in which it announced further easing of restrictions.

5 MIN READ

01

Roadmap out of the pandemic

Activity	Date
<ul style="list-style-type: none">1,000 spectators attended the Irish Cup Final for logistical and operational learningPubs, Clubs, Hotels, RestaurantsIndoor VisitsIndoor AttractionsIndoor Group ExerciseLibraries reopeningExtra-curricular activities at schoolFull return of outdoor sport	Friday 21 May 2021 Monday 24 May 2021
<ul style="list-style-type: none">Seated theatres, concert halls and other venuesConferences and exhibitionsHugging loved ones	Monday 21 June 2021

the message is now to focus on the behaviour of individuals rather than the distance that individual may travel. Therefore, while the latest guidance is clearly still to work from home insofar as possible, there is a marked divergence from previous guidance as restrictions begin to lift.

However, the Executive maintains that its response is solely dictated by expert scientific advice and data, and while the roadmap for exiting lockdown has been brought forward, no date commitment has been made for the discontinuance of all social restrictions. Similarly, the Prime Minister’s pledged to discontinue all social restrictions by 21 June 2021 now hangs in the balance as cases of the Indian variant continue to rise around the UK.



02

Vaccinations

Employers are now faced with the difficult task of balancing existing health and safety obligations to employees, with the new reputational and social considerations posed by employer mandated inoculation i.e. the ‘no jab no job’ policy, and the broad, discording, public opinion that comes with that.

Can employers dismiss staff who will not get vaccinated?

Yes – although there are complex considerations which are yet to be tested in the courts and tribunals.

There has been much discussion around the legitimacy of employer mandated vaccinations. For some, it is welcomed as a necessary measure in the public interest; but for others, it comes as a threat to autonomy.

‘Vaccine hesitancy’ is not a protected characteristic for the purposes of UK

discrimination laws. That said, an individual who lives with a disability may be able to argue that dismissal for failing to inoculate is discriminatory on grounds of disability. That said, this would require an unusual and specific set of facts, and is simply not applicable for the overwhelming majority of people.

Similarly, Muslims might argue that the vaccine offends the laws of halal and Christians may cite ethical concerns insofar as reports suggest the DNA used in trials was harvested from stillborn children/ aborted babies from the 1970’s. Whether those concerns are factually correct or not is not actually the point – the point is that employees may adopt an ethical standpoint on the vaccine based on religious beliefs which, akin to the examples referenced above, raises statutory protections for employees who hold those beliefs.

There is also a small but significant proportion of the population that has real concerns about the possible side effects of the vaccination. While medical experts have stated that benefits of the vaccination outweigh the harm to the population as a

whole, certain individuals will, nonetheless, suffer from side effects. This raises complex considerations for employers and it remains unclear whether or to what extent an employer might be liable for adverse reactions suffered by employees.

Immunosuppressed employees may not be permitted to have the vaccine in the first instance meaning employer lead protocol based on a binary assessment of vaccinated /not-vaccinated status will be very high risk. The employer could potentially be fixed with knowledge of an employee’s previously undisclosed health problems, which in turn, may require reasonable adjustments to the workplace at the expense of the business.

Nevertheless, employers may still be able to justify discrimination if they can show good reason for requiring the whole workforce to get vaccinated. For example, employer’s which operate in the healthcare sector and provide close contact care to vulnerable patients will have a much stronger case for mandating employee vaccination.



For the concerned employer, there is a clear differentiation to be made between someone who is vaccine hesitant and an ‘anti-vaccer’. There will likely be increased scope for dismissing ‘evangelical’ anti-vaccers on the basis that their anti-vaccine message is inconsistent with the organisations values.

Employer disclaimers which seek to reduce legal liability for transmission of covid-19 are ineffective in law. It is also virtually impossible to ascertain where any individual contracted the virus.

Practical steps for employers

- Encourage vaccination amongst staff.
- Existing health and safety measures in the work place should not be pared back solely because vaccinations are being rolled out.
- Avoid blanket or binary decisions based on vaccination status.
- Do not press employees for their reasons for not taking a vaccine. This may unearth previously unknown medical knowledge at which stage the employer is fixed with that information and may be required to consider reasonable adjustments.
- Employer disclaimers which seek to reduce legal liability for transmission of covid-19 are ineffective in law. It is also virtually impossible to ascertain where any individual contracted the virus.



03

Vaccine passports

The introduction of a UK – wide covid-19 passport which requires individuals to show proof of either double vaccination or, at least, a negative covid-19 test result, remains a distinct possibility.

Public opinion is generally in favour of a passport; a YouGov poll last month found that 54% of Britons supported the initiative in the context of international travel. That said, a significant minority of the population remains concerned that the social and legal implications have not been fully considered. More than 70 MPs have already voiced their opposition.

The reality, however, is that the possibility of a COVID passport is being explored globally and many airlines are poised to introduce a similar system. It is likely, therefore, that UK citizens will require a passport for travel with certain airlines to certain countries, irrespective of the UK government’s stance.

It is hoped that the passport could usher in a return to normality but some experts have

warned that a robust passport system could undermine the purpose of the initiative altogether if public perception is that it is presented as an ultimatum for access to non – essential services. This could drive public resentment and may have the net effect of discouraging citizens from inoculating – even in the event that they otherwise would have. Government’s that pushed opt-out organ donation programmes in the 90’s will be live to this psychological phenomena, particularly Brazil, where the introduction of an ‘opt out’ organ donation scheme proved hugely unpopular.

Other scientists have suggested the entire concept of the passport is asinine, citing the number of variants developing around the world and the uncertainty of the vaccines’ defence against these variants as their rationale. The touted utility of the passport is largely predicated on the understanding that those who have been vaccinated are protected from serious illness in the event of transmission. However, there is a risk of variants developing that can withstand or bypass the current vaccines meaning, some scientists argue, that the COVID

passport is futile. It remains unclear how far this argument goes, however, as the Prime Minister and other leading health experts have suggested just this week that the existing vaccines do offer protection against new variants.

The passport would most likely be in the form of a digital certificate held on a smartphone and accessible by a QR code, with some suggestions it could be through the NHS app. This comes with fears of ‘Big Tech’ control over private data, but has also raised questions about how this information is to be stored and handled. If an airline or place of business requires a customer or employee to show proof of vaccination or a negative test, this information will have to be held by that company. Employers should practice Data Minimisation, meaning information should only be stored if it is adequate, relevant and necessary for the delivery of the service.



04

Coronavirus Job Retention Scheme (CJRS)

The CJRS will run until the end of September 2021. Until the end of June 2021 the government will pay 80% of employees’ usual wages for the hours which they did not work, up to a cap of £2,500 per month.

Government contributions will incrementally decrease, and employer contributions will be introduced, from June to September as follows:

Government contribution of usual wages for hours not worked	Employer Contribution	Salary Cap	Date
80%	0	£2,500	Until end of June 2021
70%	10%	£2,187.50	July 2021
60%	20%	£1,875	August and September 2021



05

Hybrid working in a post-pandemic world

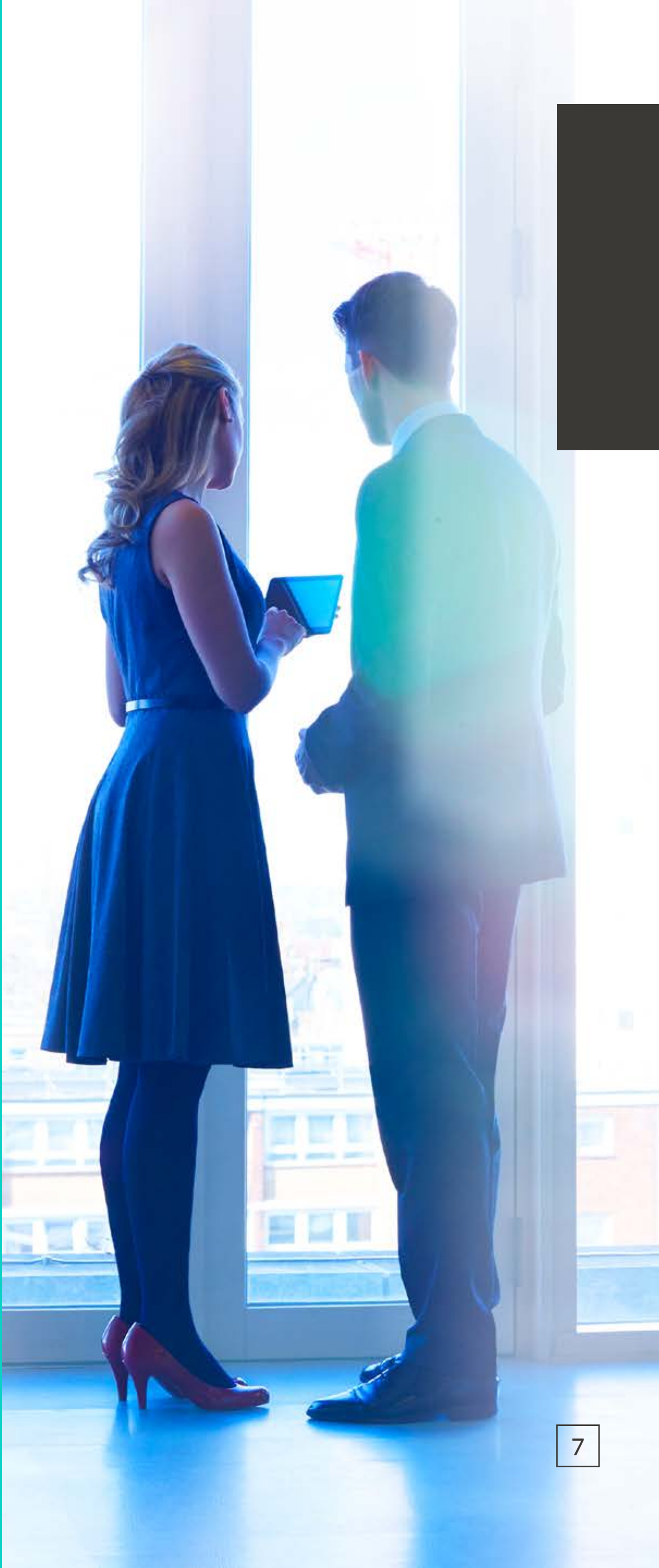
In the last year there has been a marked shift in how, and where, people work. The transition to homeworking in the last year has caused many employers to consider implementing a hybrid working model.

However, employers should consider that the introduction of a hybrid working scheme will have an impact on existing employment arrangements. The impact is obvious in some respects insofar as contracts of employment and company policies will need to be updated to reflect the new model; however, there are a broad range of considerations which are not immediately apparent. Other affected areas of business will likely be:

- Health and safety risk assessments
- Data protection
- Employee privacy
- Tax and insurance
- Cross – border working
- IT systems and equipment
- Employee engagement and wellbeing
- Performance management
- Expenses
- Holidays and working time

If you would like more information about implementing a hybrid – working model please see our article [‘Hybrid working and the ‘death of the office’: the future of the post-pandemic workplace.’](#)

Equally, if you would like practical advice regarding the implementation of your hybrid – working model, please do not hesitate to contact a member of [the Employment team at A&L Goodbody, Belfast.](#)



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Resources



**Hybrid working and the ‘death of the office’:
the future of the post-pandemic workplace**

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