

Date: 25 August 2025
Our ref: K: FOI/Ref: 2025-000245
Email: NSS.DevServicesFOI@nhs.scot

Dear [REDACTED]

Freedom of Information Reference: FOI-2025-000245 – Surgical face masks.

I refer to your freedom of information request that we received on 02 August 2025 requesting the following information.

I understand you are not in the position to review my mask exemption. This was not my initial query. I would like if you could relate to the previous email clearly stating surgical masks do not fall under PPE protection against Covid 19, flu.

I would appreciate if you could read the email again, and send me feedback based on scientific research. I would also like to know, why surgical face masks are still imposed on staff, knowing they not only provide zero protection against virus but also pose a great health risk to those who wear them on wards, which are poorly ventilated.

Many wards require their staff to wear surgical masks at all times during 12 hours shift. I recently contacted my union if the requirement could be imposed on everyone. I suffer from PTSD after mandated PPE during pandemic mainly surgical masks. I decline to wear them even if imposed by local board or ward management.

Please read the answer below I obtained from my legal advisor.
I would appreciate if you could relate it to my potential mask exemption.

Dear XXX,

As you state the mask policy is only recommended it has no legal status, there are many processes they must go through before they can enforce an employee to wear a mask, below is a script we suggest giving any manager you tries to force you to wear one.

If the employer wishes to assert that it is their “policy” that face coverings be worn, for example as an infection control measure, then this would fall under Personal Protective Equipment at Work (Amendment) Regulations (PPER) 2022, and a Control of Substances Hazardous to Health Regulations (COSHH) 2002 assessment, which are both tightly regulated in law by the Health & Safety Executive (HSE). This would therefore mean satisfying the following conditions:

1. Providing the Correct PPE

According to the Health and Safety Executive (HSE) (government regulator). “Whilst [fluid resistant surgical masks] provide a physical barrier to large projected droplets, they do not provide full respiratory protection against smaller suspended droplets and aerosols. That is, they are not regarded as personal protective equipment (PPE) under the European Directive 89/686/EEC (PPE Regulation 2002 SI 2002 No. 1144).”

Source: <https://www.hse.gov.uk/biosafety/diseases/pandflu.htm#ref15>



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Under HSE, PPER and COSHH legislation, when choosing Respiratory Protective Equipment (RPE) to mitigate biological agents (for example the SARS-CoV2 virus), PPE with a protection factor of at least 20 (FFP3 in the EU, or N95 in the USA) must be provided. It must also be fit-tested by an appropriately qualified Health and Safety Practitioner, as well as an individual risk assessment provided for every employee who is being asked to wear it. Please note that fluid resistant surgical masks, cloth masks and face visors, fall below the required standard of FFP3 grade, and DO NOT mitigate airborne aerosolised respiratory viruses such as Influenza A & B, Rhinovirus, Adenovirus, RSV or SARS-CoV2 (Covid-19).

2. Individual Risk Assessments

Under the Management of Health and Safety at Work Regulations (MHSWR) 1999, section 3 (Risk Assessment) “every employer shall make a suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work.” Therefore, the onus is on the employer to provide the evidence that the benefits of wearing a face covering, outweigh the risks to health imposed by wearing it; and that on balance it is in the employee’s best interests to wear the appropriate PPE being provided. The risk assessment must be undertaken on an individual basis.

3. Harms Caused by Mask Wearing

As per the HSE EH40/2005 Workplace Exposure Limits, any workplace issued equipment that exposes personnel to >5000 PPM of Carbon Dioxide during an 8 hour long-term exposure period, will be a breach of the COSHH Regulations 2002 (as mentioned above) and is therefore illegal. Many employers are wrongly assuming that the blue “surgical” type masks, face visors and/or cloth masks are an effective means of controlling transmission of airborne respiratory viruses. There is no clinical evidence for this, and the full time wearing of masks by personnel carry far more harms and infection risks, than by not wearing them at all. There is a risk of fibrosis of the lung due to inhalation of micro-fibres from the textile of which the mask is manufactured; in addition to numerous health problems associated with hypoxia, hypercapnia, impedance of clinical judgement, and the accumulation of bacteria and fungi within the mask itself.

See Kisielinski et al (2021) for further information.

4. Reasonable Adjustments

Failure to make reasonable adjustments such as not recognising an employee’s self-exemption (not being able to wear a face covering), would be a breach of sections 6, 15, 20 and 21 (disability provisions) of the Equality Act 2010. A “reasonable adjustment” does not include insisting an employee works from home, or moving them to an office-based role; this is a repudiatory breach which changes the fundamental core of the employee’s contract. It is a de facto breach of contract (an unauthorised unilateral variation), which is a form of unfair constructive dismissal.

Additionally, under the Health and Safety at Work Act 1974 (Section 2) (a) “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.” And, (e) “the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.” To clarify, if an employer-supplied face covering or mask is causing the employee harm, (physical or mental), the employer becomes culpable for that harm. To continue forcing an employee to



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wear a mask when they have acknowledged it is causing them harm, would be serious negligence on the part of the employer; a de facto form of constructive dismissal.

Summary

My trade union legal team have advised me that employers who wish to implement blanket mandatory mask/ face-covering policies in the working environment (without allowing for exemptions), risk opening themselves to multiple litigation and employment tribunal claims. In order to justify their imposition, there needs to be (1) a full COSHH assessment undertaken by the employer; (2) individual risk assessments undertaken for employees; (3) appropriate PPE selection to match the biological agent being controlled; (4) proper fit-testing provided for each individual employee who requires PPE; and (5) adherence to the Equality Act 2010 legislation when taking into account individual circumstances, disability provisions, and their duty of care not to cause harm (physical or mental) to any employee. Additionally, the employer needs to consider the risk of injury, illness or health damage occasioned by the restriction of air supply to its employees by making it obligatory to wear a close-fitting face covering over their nose and mouth throughout the working day. Any physical or mental harm caused to its employees by the employer's policy, makes the employer liable and culpable for that harm.

We have now completed the search of our records and can provide you with the following information:

Within NHSScotland, health and care settings are expected to follow the National Infection Prevention and Control Manual (NIPCM), which is updated in real-time. This contains guidance on face mask use within Chapters 1 and 2. The indications for use of a face mask are provided within Sections 1.4 and 2.4. The recommendations for practice within the NIPCM are informed by systematic literature reviews. The literature review for surgical face masks can be found here: Standard Infection Control Precautions (SICPs) and Transmission Based Precautions (TBPs) literature review.

We are currently undertaking a scheduled update to our surgical face masks literature review and aim to have this completed in Spring 2026. This update is being carried out to coincide with updates to our respiratory protective equipment (RPE) literature review and transmission-based precautions literature review. More information can be found in the introductory section of Chapter 2: National Infection Prevention and Control Manual: Chapter 2 - Transmission Based Precautions (TBPs).

I trust you will find the information of assistance and if you require any further information, please do not hesitate to contact me.

If you are unhappy with any aspect of how we have dealt with your request, you can make representations to us asking us to review the handling of your request. Please write to the Associate Director Governance and Board Services (Board Secretary) at the email address nss.foi@nhs.scot within 40 working days of the date of this correspondence.

If after a review you are still unhappy, you also have the right to apply to the Scottish Information Commissioner, who can be contacted at Kinburn Castle, St Andrews, Fife, KY16 9DS, or via their [online application form](#).



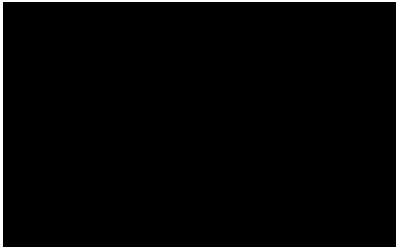
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If you have any queries about this letter, please contact me at the above address.

Yours sincerely,



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