

From: NR
To: Cabinet Secretary for Health and Sport
Cc: Lord Advocate; Minister for Public Health, Sport and Wellbeing; Minister for Public Health, Sport and Wellbeing; DG Health & Social Care; Chief Medical Officer; DCMO Health COVID19; Connaghan J (John) (Health); Leitch J (Jason); Mitchell E (Elinor); CNOD - Covid 19; McQueen F (Fiona); McCallum R (Richard); Healy M (Michael); Lea-Ross S (Stephen); Paterson J (John); NR; Dunk R (Rachael); Birch J (Jason); NR; Communications Hearer; Communications Covid-19; NR; Health Resilience, Performance & Delivery - COVID-19 Response; Hutchison D (David); Beattie C (Caroline)
Subject: Immediate: Covid 19 - FFP3 - submission - 24 March 2020
Date: 24 March 2020 20:26:22
Attachments: Covid 19 - FFP3 - submission - 24 March 2020 V2.docx

PS/Cab Sec Health

To note **immediate** submission seeking the Cabinet Secretary's approval to deploy expired but QA tested stock of FFP3 respirators in the NHS, taking account of advice from SGLD/the Lord Advocate.

It also seeks the Cabinet Secretary's view on **whether she would wish to discuss this with the Lord Advocate this evening**. The Lord Advocate's office have been made aware that such a request may be forthcoming.

Thanks

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DPAD: Health Resilience Unit
24 March 2020

I&S

Cabinet Secretary For Health & Sport

FFP3 RESPIRATORS: USE OF EXPIRED STOCK**Purpose**

1. To:
 - **Seek your approval to release/make available to Boards** the use of FFP3 respirator mask, which has recently passed its expiry date, but has passed stringent Quality Assurance tests
 - Attach advice from SGLD to the Lord Advocate on this issue

Timing

2. **Immediate – given the current position with FFP3 masks.**

Background

3. You are aware of the current challenges in the supply chain for clinical consumables, particularly in relation to PPE and specifically the FFP3 respirator. This is most often used in intensive care units but will be used in all areas where aerosol generating procedures are carried out – emergency departments, theatres, and infectious disease units. (More rarely these are used in hospice settings within social care).
4. My submission of 21 March noted the fragile position in relation to current FFP3 stock and in relation to new supplies. National stockpiles now hold only 16K, after distribution to Boards of 73K last week. We have retained around 1.5 million FFP3 masks (made by 3M) which had recently gone out of date (after previous shelf-life extension), from a total of 19 million held across the 4 nations. **We are now moving to a position where we need to consider using this stock.**

Approval to use date Expired National Stock of FFP3 masks

5. You were advised in earlier briefing that we have been informed by PHE that the Health and Safety Executive have accepted the independent tests as evidence that the FFP3 respirators are safe to use.

Further Approvals

6. Following the earlier briefing you asked that we sought further approval from other bodies. DCMO made contact with the Academy of Medical Royal Colleges

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Scotland. They were content on the basis that Health Protection Scotland were in agreement.

7. We have contacted HPS and they are also content that the evidence supports the use of the FFP3 respirators
8. We have also spoken with workforce colleagues and they will raise with staff side representatives on the daily call tomorrow.

Legal Advice

9. We have been consulting SGLD for legal advice. They are sending briefing to the Lord Advocate for opinion today. We have asked that this opinion is provided as a matter of urgency. The legal submission is attached for your information.
10. We now note that this advice does not explicitly refer to the issue of liability in the event that there is a fault with the respirators and this leads to the harm of NHS staff. Our understanding has been that liability would ultimately rest with Scottish Ministers, but this needs to be confirmed by further legal advice.
11. If the Cabinet Secretary is minded we are contacting the on-call duty SGLD on whether this can be expedited **with a call between you and the Lord Advocate to discuss tonight.**
12. To note the advice, attached in the annex, which SGLD are providing to the Lord Advocate in relation to the potential use of the expired FFP3 respirators. They are seeking a response on this as a matter of urgency. Given the potential legal risks that have been raised by SGLD here, the Lord Advocate will wish to comment before any formal announcement can be made.

Deployment of the Stock

13. The priority is of course to secure deliveries of new stock and to deploy that or other in-date stock to any which is not technically in-date. However, it will also be important to deploy the respirators in a way which maximises their usefulness. **Therefore, it is likely that we would wish to deploy them immediately, and that they will continue to be issued concurrently with any new stock which becomes available, in order to reduce fit testing burdens on Boards and staff.**

Face Fit Testing

14. If approved to release the 3M FFP3 stock, additional assurance on safety in using these masks will be provided through the use of the 'Portacount' machines, used to fit test the masks to staff. These machines are already being deployed across Boards. These will greatly speed up fit-testing, reduce burdens on Boards and have been improving fit-test pass rates to help ensure safe usage in practice. Such results will help to improve staff confidence in their own safety.