



COVID-19 Status Certificates: Human Rights Considerations

April 2021

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Executive Summary

After many months of speculation, in recent weeks the UK Government has moved rapidly on the possibility of using what is colloquially referred to as a “COVID-19 passport” system.¹ This could see the introduction of a requirement for people to evidence their COVID-19 status, either by proving that they have been vaccinated, had a recent negative test for the virus or a positive test in recent months, in order to access venues, events, services and/or activities.² A very short public consultation was held by the UK Government, between 15 and 29 March 2021, on the use of “COVID-19 status certificates,”³ which explained:

“COVID-19-status certification refers to the use of testing or vaccination data to confirm in different settings that individuals have a lower risk of getting sick with or transmitting COVID-19 to others. Such certification would be available both to vaccinated people and to unvaccinated people who have been tested.

The government will assess to what extent certification would be effective in reducing risk, and its potential uses in enabling access to settings or relaxing COVID-19-secure mitigations.”

The consultation sought views on “the ethical, equalities, privacy, legal and operational aspects of a potential certification scheme”, however, very little detail was made available as to what the UK Government contemplated, including in what settings certification might be used and how it would work in practice. At the time of writing the submissions to the UK consultation have not yet been published,⁴ but the UK Government has indicated that it is in favour of domestic use of a COVID-19 certification scheme and has announced that trials will take place at a number of events beginning on 15 April 2021,⁵ with a view to rolling out a COVID-19 certification scheme no earlier than June.

The Scottish Government has stated that the use of COVID-19 certificates is under consideration and that they are working with the UK, Welsh and Northern Irish Governments with a view to taking a Four Nations approach.⁶ The Scottish Government has not yet confirmed that it is in favour of a certification scheme being used within Scotland.

Scotland is currently in a pre-election period and no further announcement is expected on this until after the election.

The possibility of using a COVID-19 certification scheme to access areas of society within Scotland raises a number of human rights concerns⁷ and it will be important that the Scottish Government takes its human rights obligations fully into account in considering this matter. As the Council of Europe has noted:

“the possible use of vaccination certificates, as well as immunisation data, ...to give individuals exclusive access to rights, services or public places, raises numerous human rights questions. It should be considered with the utmost caution.”⁸

Applying a human rights lens can assist in balancing societal interests and individual rights, and ensuring that threshold tests are met. The Scottish Government has a duty to take reasonable steps to minimise the risk to life posed by the virus⁹ and to protect health.¹⁰ However, the measures taken to do so must also comply with the UK's, and in turn Scotland's, human rights obligations.

The measures put in place to prevent the spread of COVID-19 to date and protect people's lives have had a dramatic impact on everyone, and on some much more than others.¹¹ Everyone has had their liberty and freedom curtailed, and there has been a significant impact on the enjoyment of human rights such as the right to private and family life, freedom of movement, freedom of assembly and the right to education. To a large extent those who were already more vulnerable, marginalised or discriminated against are also those who are most at risk from the virus, *and* most adversely affected by the measures taken to combat it. Safely re-opening society could alleviate these negative impacts and enable people to live fuller lives again. A rationale provided for the use of a certification scheme is to enable people to regain a degree of liberty, allowing them greater access to areas of life that have been curtailed, and others to work and earn a living, whilst also protecting against the transmission of the virus.

However, depending where and how it is used, a COVID-19 status certification scheme could itself have a significant impact on the

enjoyment of human rights. Requiring a COVID-19 status certificate to access areas of life such as education, housing, work, domestic travel, essential services, hospitality venues, cultural and leisure activities, community spaces, events, gyms and/or retail could discriminate against people who cannot produce such a certificate and further exacerbate the inequities highlighted during the pandemic. It could further marginalise and impact those who are already more vulnerable, such as homeless people, front-line workers, refugees and migrants and people living in poverty. Overall, a certification barrier to accessing areas of life, whereby people would be required to evidence an aspect of their health status, could involve a dramatic shift in society and a curtailment of privacy and liberty which requires to be carefully balanced with the public interest in proceeding with such a scheme.

A number of human rights could be affected by the use of COVID-19 status certificates in Scotland, including the rights to: family and private life; free movement; education; culture; an adequate standard of living, including housing and food, and freedom of thought, conscience and religion. Interference with these rights is permitted only in exceptional circumstances, where it can be clearly shown that the measure is necessary to achieve a pressing social need, and that it is proportionate, taking into account the degree to which people's human rights would be impacted and the availability of alternative measures that would have a less severe impact on their rights.

As the implementation of a certification scheme would interfere with people's human rights, before proceeding with such a scheme the Scottish Government must demonstrate that it is (1) necessary to achieve the legitimate aims of protecting life and promoting health, and (2) that the interference with people's human rights is proportionate, going no further than is necessary to achieve the aim.

In terms of necessity, the Scottish Government will require to openly and transparently set out the scientific evidence or advice relied upon, confirming that vaccines are effective at reducing transmission of the virus. As discussed in more detail in our briefing, that does not yet appear to be clear according to the WHO, and this was acknowledged by the Scottish Government in February.¹² The Scottish Government will

also have to demonstrate that the certification scheme as a whole will be effective in achieving the aim of protecting life. As discussed in our briefing, concerns have been raised about the potential for a certification scheme to undermine confidence in vaccination among those who are already less likely to accept a vaccine, and to create a false sense of immunity protection, beyond that actually achieved through vaccination. Either of these potential impacts could undermine the efficacy of a certification system and must be taken into account in demonstrating the necessity of certification in pursuing the legitimate aim of protecting life and managing the pandemic. As well as demonstrating the general necessity of a certification scheme, it will also have to be shown that certification is necessary in each context in which it is proposed to be used, given efficacy will vary from one setting to another.

The Scottish Government will also require to show that certification is a proportionate measure, interfering with people's human rights no more than is necessary to achieve the legitimate aim of protecting life. Again, this test would require to be satisfied in relation to the overall scheme as well as in each context in which it is proposed to use certification.

In our briefing we set out some of the ways in which people's human rights may be interfered with by a certification scheme. However, to fully understand the potential impact of introducing a certification scheme it will be essential to carry out a meaningful participatory process, hearing directly from people across the country, including those from the most vulnerable groups, those who cannot be vaccinated and those who decline to be vaccinated, and taking their views fully into account.¹³ It is through a participation process, as well as through engagement with representative organisations, that the concerns of those who may be impacted by certification will come to light. Participation is a key element in taking a human rights based approach to decision making.¹⁴ Sufficient time for meaningful participation must be built in to the Scottish Government's decision-making process on this issue.

In terms of the potential impact on people's human rights, we note in our briefing that a blanket vaccination certification requirement would exclude many people in Scotland. Only a proportion of the adult population of Scotland has been vaccinated,¹⁵ and some people are not

currently eligible for a vaccine, including young people and children. This may change, but currently a vaccination certification system could mean vaccinated adults could access services, venues and events, but children and young people could not. People who have severe allergies and certain health conditions may also be advised against taking the vaccine, and until very recently pregnant women were advised against it.¹⁶ Some people will decline the vaccine, including on ethical or religious grounds. Others may decline due to concern about the efficacy or safety of a vaccine, or lack of trust in government. It is important to note that the rate of vaccine hesitancy in Scotland is much higher in already marginalised and vulnerable groups, including Black and ethnic minority communities.¹⁷ Depending on where and how it was implemented, certification may result in discrimination against one or more of these groups who will not be in a position to produce evidence of vaccination.

Provision of an alternative to vaccination could address some of the concern regarding exclusion and discrimination. The UK Government has indicated that the certification scheme it is considering would involve certification of vaccination, a negative test for the virus, or evidence of having had the virus within recent months.¹⁸ However, whether or not testing would be a real alternative for people who have not been vaccinated would depend on ensuring that testing was available, accessible and affordable, in the various contexts in which it is proposed to use certification. If individuals were required to pay for a test that would be an additional financial barrier which could exacerbate economic inequalities.¹⁹ While there has been recent reference to the possibility of providing everyone with access to two tests a week,²⁰ it is not yet clear how accessible this will prove to be, or if supplies will continue to meet demand, and until details of any proposed scheme are set out it is not possible to say if this provision would be sufficient to enable people who have not been vaccinated to live as freely as those who have been. If the alternatives to vaccine certification were not available, accessible and affordable and certification was implemented across a range of services, venues and/or activities, this could also amount to coercing people into accepting the vaccine against their

fundamental ethical or religious beliefs or other concerns, in order to be able to live their lives.

Consideration should also be given to where the burden of testing would fall most heavily. People working from home with access to private outdoor space, reliable internet access and private transport may only require to test very occasionally for social activities, compared to a front-line worker who takes public transport, has no private outdoor space and who may have to test very frequently in order to go about their day-to-day life.

Considerable emphasis has been placed on the use of technology for a certification scheme, with reference made to development of a phone app.²¹ A substantial proportion of the Scottish population does not have access to a smart phone and so will not be in a position to use this technology.²² The alternative of a paper certificate may go some way to addressing this but there are many associated practicalities that could severely undermine its utility. For some people retaining and carrying with them a paper certificate would be extremely challenging if not impossible, for example homeless people. Unlike a driver's licence, if someone misplaced their paper certificate they could find themselves excluded from essential day-to-day services and activities, domestic travel, retail, education and/or work. Depending on where and how certification was used the consequences could be severe.

It is important to emphasise that whether or not certification will be used in public settings is not the only question the Scottish Government must consider. The Scottish Government has a duty to protect people from unlawful interference with their human rights, as well as to respect and fulfil those rights. Therefore, in addition to deciding whether or not to use certification in relation to any public services or spaces, the Scottish Government must also decide: (1) if it will assist in the creation and/or implementation of a certification scheme, for example by issuing standard certificates to all who have been vaccinated, or by linking public health data to an app,²³ and (2) how it will regulate the use of certification by private entities. It may be possible for a certification system to be created for use in the private sphere even without the Scottish Government's support, particularly if required health information

is available and accessible as a result of the use of certification for international travel. If the use of certification by private entities for access to venues, activities and events would breach human rights, the Scottish Government must intervene to protect those rights.

The UK Government has announced plans to use COVID-19 status certification for international travel.²⁴ Within its devolved competence, the Scottish Government may require to make decisions regarding the support it will provide to enable certification for international travel, for example through the provision of health information in a form that would not ordinarily be provided. It is notable that the WHO advises against use of certification for international travel, for reasons of both efficacy and ethics, as we discuss in our briefing.²⁵

In our briefing we set out in more detail some of the main human rights that may be impacted by use of a certification scheme. We then look in more detail at the test for lawful interference with those rights, which must be satisfied by the Scottish Government if it decides to use or support a COVID-19 status certification.

Based on the information currently available, the Scottish Human Rights Commission makes the following recommendations to the Scottish Government, all of which should be followed before making a decision on using, supporting or permitting the use of a certification scheme within Scotland:

Recommendation 1: The Scottish Government should adopt a human rights based approach to reaching decisions about a potential COVID-19 status certification scheme. The PANEL principles should be utilised: Participation, Accountability, Non-Discrimination, Equality, Empowerment and Legality.²⁶ In particular, a clear participatory process should guide any decision that is taken by the Scottish Government and sufficient time for this should be built into the decision-making process, which should be transparent, with reasoning applied and evidence and advice relied upon clearly set out.

Recommendation 2: The Scottish Government should only use, support or permit any use of COVID-19 status certification once there is clear scientific evidence (i) that vaccinations are effective in reducing transmission of the virus, and (ii) of the duration of protection afforded by the vaccines. This must be considered as part of an analysis of the necessity and proportionality of any proposed certification scheme.

Recommendation 3: The Scottish Government should only use, support or permit any use of COVID-19 status certification once there is clear advice regarding the overall effectiveness of the proposed COVID-19 status certification scheme in protecting life and managing the pandemic, and it is assessed as both necessary and proportionate to do so.

Recommendation 4: The Scottish Government should only use, support or permit any use of COVID-19 status certification if alternatives to vaccine certification are included that are viable alternatives for those who have not been vaccinated. If the alternatives involve evidencing test results, ensure that relevant tests are available, accessible and affordable, in general and in relation to the specific contexts in which it is proposed to use certification.

Recommendation 5: The Scottish Government should only use, support or permit any use of COVID-19 status certification if the system is practicable for all, for example by including suitable and accessible alternatives for those who do not own or use smartphones, and for those who do not wish to use the technology for other reasons.

Recommendation 6: The Scottish Government should carry out a strict necessity and proportionality analysis in relation to the general use of a COVID-19 status certificates and the specific contexts in which it is proposed that certification will be used. The least restrictive measures that achieve the legitimate aim must be used. Consideration should be given to the need for alternatives or exceptions and how these would be provided for through the certification scheme. The

decision-making process must be open and transparent, with reasoning applied and evidence and advice relied upon clearly set out.

Recommendation 7: The Scottish Government should openly and transparently consider what regulation of private entities' use of certification is necessary to protect people's human rights. The Scottish Government will have to decide whether or not to allow private actors to require certification for entry to premises or events or to access services, such as housing, work, food, clothing, and cultural or leisure activities, and if so on what terms.

Recommendation 8: If the Scottish Government decides to use, support or permit COVID-19 status certification in certain settings, any such scheme must be temporary, and there must be regular, open and transparent review of the ongoing necessity and proportionality of the scheme, generally and in each setting in which it is used. This should include regular assessment of the impact of the scheme on people's human rights, as well as the effectiveness of the scheme in achieving its aim. A sunset provision should be enshrined in any certification scheme, ensuring that the measures are to come to an end on a specified date, or as soon as specific conditions are satisfied, for example when a sufficient number of people have been vaccinated or "herd immunity" has been generated, if sooner.

Recommendation 9: To the extent that this is within the devolved competence of the Scottish Government, only use or support the use of COVID-19 status certification for international travel:

(a) once there is clear scientific evidence: (i) that vaccinations are effective in reducing transmission of the virus, and (ii) of the duration of protection afforded by the vaccines;

(b) if testing is included as an alternative to vaccination and tests are available, accessible and affordable such that testing is a real, practicable alternative for those who have not been vaccinated; and

(c) following clear guidance from the World Health Organisation.

1. Introduction

After many months of speculation, in recent weeks the UK Government has moved rapidly on the possibility of using what is colloquially referred to as a “COVID-19 passport” system.²⁷ This could see the introduction of a requirement for people to evidence their COVID-19 status, either by proving that they have been vaccinated, had a recent negative test for the virus or a positive test in recent months, in order to access venues, events, services and/or activities. A very short public consultation was held by the UK Government, between 15 and 29 March 2021, on the use of “COVID-19 status certificates,”²⁸ which explained:

“COVID-19-status certification refers to the use of testing or vaccination data to confirm in different settings that individuals have a lower risk of getting sick with or transmitting COVID-19 to others. Such certification would be available both to vaccinated people and to unvaccinated people who have been tested.

The government will assess to what extent certification would be effective in reducing risk, and its potential uses in enabling access to settings or relaxing COVID-19-secure mitigations.”

The consultation sought views on “the ethical, equalities, privacy, legal and operational aspects of a potential certification scheme”, however, very little detail was made available as to what the UK Government contemplated, including in what settings certification might be used and how it would work in practice. At the time of writing the submissions to the UK consultation have not yet been published, but the UK Government has indicated that it is in favour of domestic use of a COVID-19 certification scheme and has announced that trials will take place at a number of events beginning on 15 April 2021,²⁹ with a view to rolling out a COVID-19 certification scheme no earlier than June.

The Scottish Government has stated that the use of COVID-19 certificates is under consideration and that they are working with the UK, Welsh and Northern Irish Governments with a view to taking a Four Nations approach.³⁰ The Scottish Government has not yet confirmed that

it is in favour of a certification scheme being used within Scotland. Scotland is currently in a pre-election period and no further announcement is expected on this until after the election.

The possibility of using a COVID-19 certification scheme to access areas of society within Scotland raises a number of human rights concerns³¹ and it will be important that the Scottish Government takes its human rights obligations fully into account in considering this matter. As the Council of Europe has noted:

“the possible use of vaccination certificates, as well as immunisation data, ...to give individuals exclusive access to rights, services or public places, raises numerous human rights questions. It should be considered with the utmost caution.”³²

Applying a human rights lens can assist in balancing societal interests and individual rights, and ensuring that threshold tests are met. The Scottish Government has a duty to take reasonable steps to minimise the risk to life posed by the virus³³ and to protect health.³⁴ However, the measures taken to do so must also comply with the UK's, and in turn Scotland's, human rights obligations.

The measures put in place to prevent the spread of COVID-19 and protect people's lives have had a dramatic impact on everyone, and on some much more than others.³⁵ Everyone has had their liberty and freedom curtailed, and there has been a significant impact on the enjoyment of human rights such as the right to private and family life, freedom of movement, freedom of assembly and the right to education. To a large extent those who were already more vulnerable, marginalised or discriminated against are also those who are most at risk from the virus, *and* most adversely affected by the measures taken to combat it. Safely re-opening society could alleviate these negative impacts and enable people to live fuller lives again. A rationale provided for the use of a certification scheme is to enable people to regain a degree of liberty, allowing them greater access to areas of life that have been curtailed, and others to work and earn a living, whilst also protecting against the transmission of the virus.

However, depending where and how it is used, a COVID-19 status certification scheme could itself have a significant impact on the enjoyment of human rights. Requiring a COVID-19 status certificate to access areas of life such as education, housing, work, domestic travel, essential services, hospitality venues, cultural and leisure activities, community spaces, events, gyms and/or retail could discriminate against people who cannot produce such a certificate and further exacerbate the inequities highlighted during the pandemic. It could further marginalise and impact those who are already more vulnerable, such as homeless people, front-line workers, refugees and migrants and people living in poverty. Overall, a certification barrier to accessing areas of life, whereby people would be required to evidence an aspect of their health status, could involve a dramatic shift in society and a severe curtailment of privacy and liberty. This requires to be carefully balanced with the public interest in proceeding with such a scheme.

A number of human rights could be affected by the use of COVID-19 status certificates in Scotland, including the rights to: family and private life; free movement; education; culture; an adequate standard of living, including housing and food, and freedom of thought, conscience and religion. Interference with these rights is permitted only in exceptional circumstances, where it can be clearly shown that the measure is necessary to achieve a pressing social need, and that it is proportionate, taking into account the degree to which people's human rights would be impacted and the availability of alternative measures that would have a less severe impact on their rights.

As the implementation of a certification scheme would interfere with people's human rights, before proceeding with such a scheme the Scottish Government must demonstrate that it is (1) necessary to achieve the legitimate aims of protecting life and promoting health, and (2) that the interference with people's human rights is proportionate, going no further than is necessary to achieve the aim.

In terms of necessity, the Scottish Government will require to openly and transparently set out the scientific evidence or advice relied upon, confirming that vaccines are effective at reducing transmission of the virus. As discussed in more detail in our briefing, that does not yet

appear to be clear according to the WHO, and this was acknowledged by the Scottish Government in February.³⁶ The Scottish Government will also have to demonstrate that the certification scheme as a whole will be effective in achieving the aim of protecting life. As discussed in our briefing, concerns have been raised about the potential for a certification scheme to undermine confidence in vaccination among those who are already less likely to accept a vaccine, and to create a false sense of immunity protection, beyond that actually achieved through vaccination. Either of these potential impacts could undermine the efficacy of a certification system and must be taken into account in demonstrating the necessity of certification in pursuing the legitimate aim of protecting life and managing the pandemic. As well as demonstrating the general necessity of a certification scheme, it will also have to be shown that certification is necessary in each context in which it is proposed to be used, given efficacy will vary from one setting to another.

The Scottish Government will also require to show that certification is a proportionate measure, interfering with people's human rights no more than is necessary to achieve the legitimate aim of protecting life. Again, this test would require to be satisfied in relation to the overall scheme as well as in each context in which it is proposed to use certification.

2. Human Rights Based Approach

In this briefing we set out some of the ways in which people's human rights may be interfered with by a certification scheme. However, to fully understand the potential impact of introducing a certification scheme it will be essential to carry out a meaningful participatory process, hearing directly from people across the country, including those from the most vulnerable groups, those who cannot be vaccinated and those who decline to be vaccinated, and taking their views fully into account. It is through a participation process, as well as through engagement with representative organisations, that the concerns of those who may be impacted by certification will come to light. Participation is a key element in taking a human rights based approach to decision making and meaningful participation is critical in a decision-making process like this, which could lead to the introduction of a system regulating private lives to a degree far beyond anything seen previously, particularly given the

precedent this could set. Sufficient time for meaningful participation must be built in to the Scottish Government's decision-making process on this issue.

Recommendation 1: The Scottish Government should adopt a human rights based approach to reaching decisions about a potential COVID-19 status certification scheme. The PANEL principles should be utilised: Participation, Accountability, Non-Discrimination, Equality, Empowerment and Legality.³⁷ In particular, a clear participatory process should guide any decision that is taken by the Scottish Government and sufficient time for this should be built into the decision-making process, which should be transparent, with reasoning applied and evidence and advice relied upon clearly set out.

3. Human Rights Potentially Affected

We set out below some of the main rights that may be affected by the introduction of a COVID-19 status certification scheme. However, without specification as to how and where this scheme would apply, this is necessarily drawn in fairly general terms at this stage.

All of the rights that we set out below are qualified rights and can be lawfully interfered with in limited circumstances, where a particular measure is demonstrably necessary and proportionate to achieve a legitimate aim. After setting out the main human rights that may be affected, we discuss necessity and proportionality in more detail.

The rights set out below are not intended to be exhaustive. The potential implications of introducing a certification scheme could be far reaching depending on how and where it is implemented. It is beyond the scope of this briefing to consider the potential for a certification scheme to create a form of ID system, which raises considerable human rights issues.³⁸ It is also beyond the scope of this briefing to consider in detail the human rights implications of the use of digital technology and potential use of biometrics, including facial recognition.³⁹ These and related matters should be given detailed consideration before proceeding with any certification scheme.

3.1. European Convention on Human Rights

The UK has ratified the European Convention on Human Rights (“ECHR”) and it has been incorporated in domestic law through the Human Rights Act.

3.1.1. Private and family life

Article 8 recognises that everyone has the right to respect for their private and family life. Private life is a broad concept and the European Court of Human Rights (“ECtHR”) has determined that, among other things, it covers:

- a) the physical and psychological integrity of a person;⁴⁰
- b) the right to establish and develop relationships with other human beings (to a certain degree);⁴¹
- c) aspects of an individual’s physical and social identity;⁴²
- d) the right to “personal development” or the right to self-determination;⁴³
- e) the right to respect for the decisions both to have and not to have a child.⁴⁴

Overall, Article 8 protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world.⁴⁵ The ECtHR has stressed that the right to establish relationships includes relationships of a professional or business nature,⁴⁶ considering that in the course of their working lives the majority of people have a significant opportunity to develop relationships.⁴⁷ Restrictions imposed on access to a profession have therefore been found to affect “private life”.⁴⁸

The right to private life also extends to aspects of personal identity, including the confidentiality of health data, which is required not only to respect the privacy of a patient, but also to preserve their confidence in the medical profession and in health services in general. Domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data.⁴⁹

There are multiple ways in which the right to private and family life could be affected by the usage of COVID-19 status certificates. If people are prevented from accessing work, education, culture, leisure, community spaces, events, gyms and/or travel this could have a severe impact on their right to personal development, and to establish and develop relationships. If people were effectively coerced into accepting a vaccination due to widespread use of a certification system, that could interfere with their private life, as vaccination is a physically invasive medical procedure. People who require to test very frequently will bear more of a testing burden, those who use public transport and/or public services, who don't have access to online services or private outdoor space, may be more affected depending where and how a scheme was used.

COVID-19 status certificates could also impact on the confidentiality of people's health status, by requiring people to make it public in order to access services on a daily basis. If COVID-19 status certificates are created through smartphones apps, confidential health data could be vulnerable to being illegitimately accessed by the state or others.

3.1.2. Freedom of Thought, Conscience and Religion

Article 9 recognises the right of everyone to freedom of thought, conscience and religion, which includes the right to manifest, or live according to, protected religious and non-religious beliefs. Non-religious beliefs that have been found to be protected under the ECHR include veganism⁵⁰ and forms of conscientious objection.⁵¹

Some people may decline the vaccine on the basis that it contains animal products or has been tested on animals, either for religious reasons or conscientious objection, as a manifestation of their protected beliefs.

Religious groups recently wrote to the Prime Minister to argue against the introduction of a COVID-19 certification scheme, noting that: "People may have various reasons for being unable or unwilling to receive vaccines currently available including, for some Christians, serious issues of conscience related to the ethics of vaccine manufacture or testing."⁵²

3.1.3. Non-discrimination

Article 14 recognises that rights contained in the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

“Other status” has been held to cover a distinction made on account of an individual’s health status, either as a disability or a form thereof.⁵³

A blanket vaccine certification system, without adequate alternatives that are practicable, accessible and affordable, could be unlawfully discriminatory against those who are not able to produce a vaccine certificate, including children and young people, those who have certain health conditions, those who decline the vaccine for religious or ethical reasons, and others who may decline a vaccine due to concern about its efficacy or safety, or lack of trust in government. It is important to note that the rate of vaccine hesitancy in Scotland is much higher in already marginalised and vulnerable groups, including Black and ethnic minority communities,⁵⁴ and the available data on this is limited, making ongoing assessment of impact difficult.⁵⁵

Depending on where and how it was implemented, certification could result in unlawful discrimination against these groups.

Additional legal requirements in relation to discrimination arise under the Equality Act, particularly in relation to employers requiring employees to be vaccinated and/or requesting evidence of that from prospective employees. The UK Government is now consulting on the possibility of requiring care home staff to be vaccinated against COVID-19.⁵⁶ Employment and equality law are reserved matters under the Scottish devolution settlement and are covered in Scotland by our sister institution, the Equality and Human Rights Commission, which has set out the relevant Equality Act considerations in its briefing on this subject.⁵⁷

3.2. ICCPR

The UK has ratified the International Convention on Civil and Political Rights.⁵⁸

3.2.1. Freedom of movement

Article 12 provides that everyone who is lawfully within the territory of a state shall have to right to move freely within such territory.⁵⁹ It also enshrines the right of everyone to be able to freely leave any country, including their own, and the right to not be arbitrarily deprived of entering their own country.

3.3. ICESCR

The UK has ratified the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”),⁶⁰ which guarantees a further set of important rights which could potentially be affected by the introduction of COVID-19 status certificates.

3.3.1. Right to work

Article 6 recognises the right to work, which includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” A core and non-derogable obligation to such right is to ensure non-discrimination and equal protection of employment.⁶¹

ICESCR prohibits any discrimination in access to and maintenance of employment on the grounds of health status or other status, which has the effect of impairing or nullifying exercise of the right to work on a basis of equality.⁶² Non-discrimination applies to all facets of the employment field, including vocational training, access to employment and to particular occupations, and terms and conditions of employment.⁶³

3.3.2. Adequate standard of living

Article 11 guarantees the right to an adequate standard living, which includes adequate food, clothing, housing, and the continuous improvement of living conditions.

The right to adequate food entails that food must be available in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture. It also entails access to food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.⁶⁴ Any discrimination in access to food, as well as to means and entitlements for its procurement, constitutes a violation of ICESCR.⁶⁵

If certificates were to be required to access foodbanks, soup kitchens, markets, supermarkets, cafes, restaurants and others, the right to accessible, available and adequate food could be severely limited. Some of these services, such as soup kitchen, could be further impacted if volunteers were to be required to produce a COVID-19 certificate.

The right to adequate housing is a right to live somewhere in security, peace and dignity as it is integrally linked to other human rights.⁶⁶ Adequate housing must be accessible to those entitled to it, and disadvantaged groups must be accorded full and sustainable access to adequate housing resources.⁶⁷

People's ability to benefit from their right to adequate housing could be jeopardised if COVID-19 status certification were to be required as an essential criteria to access private or social housing. Those who are provided with temporary accommodation, as a response to homelessness, domestic violence, and other similar situations, could potentially be further impacted if COVID-19 certificates are required to access these places.

3.3.3. Right to education

Article 13 recognises the right to education. It particularly recognises that: i) primary education shall be compulsory and available free to all; ii) secondary education shall be made generally available and accessible to all; iii) higher education shall be made equally accessible to all, on the basis of capacity.

Educational institutions and programmes have to be accessible to everyone, especially the most vulnerable groups, in law and fact, and without discrimination.⁶⁸ Education must also be flexible so it can adapt

to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.⁶⁹

Concerns have been raised about the impact of a move to digitised learning on the wider aims of education, including develop socioemotional skills, critical spirit, creativity, a sense of citizenship and mutual understanding between groups that need to interact and mix in order to live together and build a peaceful society.⁷⁰

3.3.4. Cultural rights

Article 15 recognises that everyone has a right to take part in cultural life. Overall, cultural life comprises of customs and traditions through which individuals, groups, and communities express their humanity and the meaning they give to their existence. These can be reflected in language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts.⁷¹

For this right to be realised, services and goods need to be accessible and available. For them to be accessible, effective and concrete opportunities need to exist that enable individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination.⁷²

For cultural life to be available, cultural goods and services have to be open for everyone to enjoy and benefit from. This includes libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; as well as shared open spaces that are essential to cultural interaction, such as parks, squares, avenues and streets.⁷³

4. Lawful Restrictions

The rights set out above are not absolute rights and they may be interfered with in exceptional circumstances. The following sets out the applicable test for lawful interference:

Legitimate aim:

The interference must be in pursuit of a legitimate aim, such as public safety, the protection of health, and the prevention of crime. The protection of life and public health, while reopening the economy and providing the possibility of people enjoying their civil, political, economic, cultural and social rights, is a legitimate aim.

Prescribed by law:

The restriction must be set down clearly in law so that the interference is reasonably foreseeable and the risk of arbitrary application is minimised.

Necessary in a democratic society:

The necessity of the measure must be clearly established;

It must be justified by relevant and sufficient reasons;

Necessity requires more than that it is “useful”, ‘reasonable’, or ‘desirable’, it must correspond to a pressing social need, and it must be proportionate to the legitimate aim pursued; if a lesser interference would achieve the legitimate aim it must be adopted.

4.1.1. Necessity and Proportionality

The final element of the test for lawful interference set out above, necessity, is the element that will require to be given very careful consideration, both generally and specifically in each of the settings in which it is proposed to use certification.

The necessity and proportionality test was recently applied by the European Court of Human Rights in relation to a situation involving exclusion from pre-school education for children who had not been vaccinated, *Vavricka and Others v The Czech Republic*.⁷⁴ As this case has some relevance to the issues covered by this briefing we have provided a short note on the decision in the Annex.

If the Scottish Government is in favour of the use of certification within Scotland, it must justify interference with people's human rights by demonstrating that the scheme is necessary to achieve a pressing social need. While a certification scheme may assist in achieving the legitimate aims of protecting life and promoting health by managing the virus, that will be the case only if vaccination, and testing as an alternative to vaccination, are effective in reducing transmission of the virus.

Vaccine Efficacy

In terms of efficacy, the WHO has emphasised that a number of scientific unknowns remain concerning the effectiveness of COVID-19 vaccines, including: i) the efficacy in preventing disease and limiting transmission, including for variants; ii) the duration of protection offered by vaccination and the timing of booster doses; and iii) whether vaccination offers protection against asymptomatic infection. The WHO has recommended that people should not be required to evidence vaccination in order to travel, and that those who have been vaccinated should not be exempted from risk-reduction measures.⁷⁵ The Council of Europe has also noted these concerns.⁷⁶

In February the Scottish Government acknowledged that “more information is needed on vaccine efficacy and how long immunity lasts before it is possible to assess whether such a programme will be appropriate in Scotland.”⁷⁷

It may not currently be possible to justify the necessity of introducing a COVID-19 status certification scheme because of the considerable uncertainties about the efficacy of available vaccines in reducing transmission.

Testing Efficacy

The UK Government has indicated that the certification scheme it is considering would involve certification of vaccination, a negative test for the virus, or evidence of having had the virus within recent months.⁷⁸

Two types of coronavirus test are currently being used regularly in Scotland: polymerase chain reaction (PCR), and lateral flow device

(LFD). PCR tests are the most reliable but it can take some time to get the results because they are usually processed in a laboratory. LFD tests are not as accurate but produce results much more quickly.⁷⁹ An LFD test is said to produce results in as little as 30 minutes.⁸⁰

PCR tests are understood to be very sensitive and to have a high degree of accuracy for those with symptoms. However, the Scottish Government acknowledges that they “cannot reliably tell us if someone who does not have symptoms currently has the disease, or has had it in the past and has inactivated virus in their sample.”⁸¹

The WHO has pointed out that the accuracy of lateral flow tests varies depending on a number of factors including viral load,⁸² and it has been noted that “the quality and processing of the specimen are determined to a large extent by who carries out the tests,” and reliability is lower for people who are infected but asymptomatic, which is “why WHO recommends repeat testing using lateral flow devices or preferably confirmatory testing with a PCR test after a negative lateral flow test.”⁸³ Recent concerns have also been raised about the level of false positive results from lateral flow tests in the UK, reportedly leading to consideration of scaling back widespread asymptomatic testing.⁸⁴

The UK Government also appears to contemplate use of positive tests as evidence of prior infection suggesting increased immunity. However, the WHO has advised against allowing exemptions from COVID-19-related restrictions on the basis of increased immunity due to having had the virus, because of uncertainty about the length of any immunity and concerns about the reliability of antibody tests.⁸⁵

Efficacy of Overall Certification System

In addition to ensuring any decision is based on sound scientific evidence and advice regarding the efficacy of vaccination and testing in reducing the risk of transmission of the virus, a decision to introduce such a scheme must be based on reliable advice regarding the efficacy of a certification system in terms of achieving the overall aim of protecting life, health and managing the pandemic.

One aspect of the potential impact of a certification scheme is its impact on vaccine take up. Some suggest it may encourage people to accept the vaccine. This may raise human rights concerns, as we have discussed above. In terms of the efficacy of a certification scheme some have disputed the suggestion that it would encourage vaccine take-up, noting that in practice the introduction of a certification scheme could “further harm vaccine confidence among those groups least likely to take up the vaccine”.⁸⁶ This analysis included consideration of the impact of Israel’s “green pass”⁸⁷, which may be particularly pertinent given the UK Cabinet Office Minister is reportedly in Israel to learn more about its certification system.⁸⁸

Concerns have also been expressed about the potential for a certification scheme to generate over-confidence in terms of immunity from the virus, leading to a relaxation of distancing and hygiene measures before this was warranted.⁸⁹ It has been noted that Israel has not removed all social distancing and that some countries are seeing a resurgence in the virus even with extensive vaccine administration.⁹⁰ In March SAGE recommended that social distancing measures should be retained in the UK beyond June.⁹¹

Practicability

Considerable emphasis has been placed on the use of technology for a certification scheme, with reference made to development of a phone app.⁹² A substantial proportion of the Scottish population does not have access to a smart phone and so will not be in a position to use this technology.⁹³ The alternative of a paper certificate may go some way to addressing this but there are many associated practicalities that could severely undermine its utility. For some people retaining and carrying with them a paper certificate would be extremely challenging if not impossible, for example homeless people. Unlike a driver’s licence, if someone misplaced their paper certificate they could find themselves excluded from essential day-to-day services and activities, domestic travel, retail, education and/or work. Depending on where and how certification was used the consequences could be severe.

Availability, Accessibility and Affordability

Including testing as an alternative to vaccination could address some of the concern regarding exclusion and discrimination. However, whether or not testing would be a real alternative for people who have not been vaccinated would depend on ensuring that testing was available, accessible and affordable, in the various contexts in which it is proposed to use certification.⁹⁴

While PCR and LFD tests have become increasingly available in Scotland since the outbreak of the pandemic, their use has been prioritised for front line staff, vulnerable populations including in care homes, access to education and people with symptoms. While there has been recent reference to the possibility of providing everyone with access to two tests a week,⁹⁵ it is not yet clear how accessible this will prove to be. It is not yet clear if supplies of tests will continue to meet demand, and until details of any proposed scheme are set out it is not possible to say if this provision would be sufficient to enable people who have not been vaccinated to live as freely as those who have been. Consideration will also have to be given to any potential impact on supply to priority areas if increasing reliance is placed on testing for access to day-to-day activities.

If individuals were required to pay for a test that would be an additional financial barrier which could exacerbate economic inequalities.⁹⁶ It is possible to pay for testing in-store, for both LFD and PCR tests, but costs can be £80 - 100.⁹⁷ It is also possible to order an LFD test for self-testing at home for around £5 - £10. Ordering online will be a barrier for some people, while the cost will be unaffordable for some people as well as disproportionate for many every day activities.

If the alternatives to vaccine certification were not available, accessible and affordable and certification was implemented across a range of services, venues and/or activities, the use of a certification scheme could unlawfully discriminate against people who are not able to demonstrate vaccination or obtain a test. This could also amount to coercing people into accepting the vaccine against their fundamental ethical or religious beliefs or other concerns, in order to be able to live their lives.

Consideration should also be given to where the burden of testing would fall most heavily. People working from home with access to private outdoor space, reliable internet access and private transport may only require to test very occasionally for social activities, compared to a front-line worker who takes public transport, has no private outdoor space and who may have to test very frequently in order to go about their day-to-day life.

If reliable tests were not fully accessible and affordable, consideration would have to be given to creating exceptions for people who are not eligible for the vaccine, who for health reasons cannot or are advised not to take the vaccine, and people who have religious, ethical or other objections to doing so, in order to avoid discrimination. However, the creation of exceptions may impact on the overall efficacy of the system, which may in turn undermine the necessity argument.

Recommendation 2: The Scottish Government should only use, support or permit any use of COVID-19 status certification once there is clear scientific evidence (i) that vaccinations are effective in reducing transmission of the virus, and (ii) of the duration of protection afforded by the vaccines. This must be considered as part of an analysis of the necessity and proportionality of any proposed certification scheme.

Recommendation 3: The Scottish Government should only use, support or permit any use of COVID-19 status certification once there is clear advice regarding the overall effectiveness of the proposed COVID-19 status certification scheme in protecting life and managing the pandemic, and it is assessed as both necessary and proportionate to do so.

Recommendation 4: The Scottish Government should only use, support or permit any use of COVID-19 status certification if alternatives to vaccine certification are included that are viable alternatives for those who have not been vaccinated. If the alternatives involve evidencing test results, ensure that relevant tests are available, accessible and affordable, in general and in relation to the specific contexts in which it is proposed to use certification.

Recommendation 5: The Scottish Government should only use, support or permit any use of COVID-19 status certification if the system is practicable for all, for example by including suitable and accessible alternatives for those who do not own or use smartphones, and for those who do not wish to use the technology for other reasons.

Recommendation 6: The Scottish Government should carry out a strict necessity and proportionality analysis in relation to the general use of a COVID-19 status certificates and the specific contexts in which it is proposed that certification will be used. The least restrictive measures that achieve the legitimate aim must be used. Consideration should be given to the need for alternatives or exceptions and how these would be provided for through the certification scheme. The decision-making process must be open and transparent, with reasoning applied and evidence and advice relied upon clearly set out.

4.1.2. Review and Sunset Provision

Any interference with human rights must go no further than necessary to achieve the legitimate aim. This requires that the measure is in place for no longer than needed and necessitates building into any COVID-19 status certification system a requirement for regular review to assess ongoing necessity and proportionality. This will require close consideration of evidence of the impact of the scheme in terms of suppressing the virus and in terms of the impact on people's human rights.

A sunset provision should be built into any certification system, whereby after a set period of time, or when certain conditions are met, if sooner, the scheme will no longer apply. Conditions that would trigger the sunset provision could include the development of so called "herd immunity".⁹⁸

Recommendation 7: If the Scottish Government decides to use, support or permit COVID-19 status certification in certain settings, any such scheme must be temporary, and there must be regular, open and

transparent review of the ongoing necessity and proportionality of the scheme, generally and in each setting in which it is used. This should include regular assessment of the impact of the scheme on people's human rights, as well as the effectiveness of the scheme in achieving its aim. A sunset provision should be enshrined in any certification scheme, ensuring that the measures are to come to an end on a specified date, or as soon as specific conditions are satisfied, for example when a sufficient number of people have been vaccinated or "herd immunity" has been generated, if sooner.

5. Regulating Private Actors

Consideration of the possible use of a COVID-19 certification scheme in relation to public services or public spaces is not the only question the Scottish Government must consider, taking into account its human rights obligations. Its obligation is to respect, protect and fulfil the human rights set out above. This involves ensuring that all public sector bodies, and any private entities carrying out public functions, comply with these rights. However, it also requires the Scottish Government to ensure that human rights are not unlawfully interfered with by private entities operating private businesses.⁹⁹ Therefore, the Scottish Government not only requires to decide if it will use COVID-19 status certification in any public settings, it must also decide if it will support the development of a private certification scheme, for example by assisting in the production of evidence of vaccination, and if it will allow private entities to require evidence of COVID-19 status to access private venues, events and activities, and if so on what terms.¹⁰⁰

Private entities are involved in significant areas of life, including: work; education; housing; food, clothing and other retail, and cultural, social and leisure activities. If private bodies such as employers, education providers, shops, cafes, restaurants, bars, gyms, cinemas, theatres or galleries, required people to demonstrate their COVID-19 status, that could have a significant impact on many people.

The obligation to protect can necessitate direct regulation and intervention,¹⁰¹ and imposing sanctions and penalties where business activities result in breaches of rights or where a failure to act with due

diligence to mitigate risks allows such infringements to occur.¹⁰²

Therefore, the Scottish Government would have to ensure that effective remedies exist for those who are affected by potential arbitrary practices by private actors.

Employment and equality law are reserved matters under the Scottish devolution settlement and are covered in Scotland by our sister institution, the Equality and Human Rights Commission, which has set out the relevant Equality Act considerations in its briefing on this subject.¹⁰³

Recommendation 8: The Scottish Government should openly and transparently consider what regulation of private entities' use of certification is necessary to protect people's human rights. The Scottish Government will have to decide whether or not to allow private actors to require certification for entry to premises or events or to access services, such as housing, work, food, clothing, and cultural or leisure activities, and if so on what terms.

6. International Travel

While yellow fever provides precedent for vaccination certification for international travel, it is the only disease for which countries can require proof of vaccination for international travellers under the International Health Regulations and a relatively small number of countries require this.¹⁰⁴ The UK does not require anyone who travels to or from a country where yellow fever is prominent to be vaccinated.¹⁰⁵ The impact of a COVID-19 certification scheme for international travel generally would be far wider, creating greater potential for interference with travel, including for the purposes of seeing family and friends, or to study or work.

The current position of the World Health Organisation is that national authorities should not introduce a requirement of proof of COVID-19 vaccination for international travel. The WHO has raised concerns about both efficacy and ethics.¹⁰⁶ In terms of ethical issues, the WHO has noted the global context of highly unequal vaccine distribution, with very

low availability in low and low-middle income countries, and pointed out that requiring evidence of vaccination for travel could exacerbate this inequitable distribution.¹⁰⁷ In addition, individuals who do not have access to an authorised COVID-19 vaccine would be unfairly impeded in their freedom of movement if proof of vaccination status became a condition for entry to or exit from a country.¹⁰⁸ People travel internationally for many different reasons, including to work, visit family, provide care support, and attend educational programs.

Despite the concerns of the WHO, some countries and regions are making plans for the introduction of COVID-19 certification for travel,¹⁰⁹ including the UK.¹¹⁰ However, it is not yet clear how certification would work in practice.

Recommendation 9: To the extent that this is within the devolved competence of the Scottish Government, only use or support the use of COVID-19 status certification for international travel:

- (a) once there is clear scientific evidence: (i) that vaccinations are effective in reducing transmission of the virus, and (ii) of the duration of protection afforded by the vaccines;
- (b) if testing is included as an alternative to vaccination and tests are available, accessible and affordable such that testing is a real, practicable alternative for those who have not been vaccinated; and
- (c) following clear guidance from the World Health Organisation.

7. Recommendations

Based on the information currently available, the Scottish Human Rights Commission makes the following recommendations to the Scottish Government, all of which should be followed before making a decision on using, supporting or permitting the use of a certification scheme within Scotland:

Recommendation 1: The Scottish Government should adopt a human rights based approach to reaching decisions about a potential COVID-

19 status certification scheme. The PANEL principles should be utilised: Participation, Accountability, Non-Discrimination, Equality, Empowerment and Legality.¹¹¹ In particular, a clear participatory process should guide any decision that is taken by the Scottish Government and sufficient time for this should be built into the decision-making process, which should be transparent, with reasoning applied and evidence and advice relied upon clearly set out.

Recommendation 2: The Scottish Government should only use, support or permit any use of COVID-19 status certification once there is clear scientific evidence (i) that vaccinations are effective in reducing transmission of the virus, and (ii) of the duration of protection afforded by the vaccines. This must be considered as part of an analysis of the necessity and proportionality of any proposed certification scheme.

Recommendation 3: The Scottish Government should only use, support or permit any use of COVID-19 status certification once there is clear advice regarding the overall effectiveness of the proposed COVID-19 status certification scheme in protecting life and managing the pandemic, and it is assessed as both necessary and proportionate to do so.

Recommendation 4: The Scottish Government should only use, support or permit any use of COVID-19 status certification if alternatives to vaccine certification are included that are viable alternatives for those who have not been vaccinated. If the alternatives involve evidencing test results, ensure that relevant tests are available, accessible and affordable, in general and in relation to the specific contexts in which it is proposed to use certification.

Recommendation 5: The Scottish Government should only use, support or permit any use of COVID-19 status certification if the system is practicable for all, for example by including suitable and accessible alternatives for those who do not own or use smartphones, and for those who do not wish to use the technology for other reasons.

Recommendation 6: The Scottish Government should carry out a strict necessity and proportionality analysis in relation to the general use of a COVID-19 status certificates and the specific contexts in which it is proposed that certification will be used. The least restrictive measures that achieve the legitimate aim must be used. Consideration should be given to the need for alternatives or exceptions and how these would be provided for through the certification scheme. The decision-making process must be open and transparent, with reasoning applied and evidence and advice relied upon clearly set out.

Recommendation 7: If the Scottish Government decides to use, support or permit COVID-19 status certification in certain settings, any such scheme must be temporary, and there must be regular, open and transparent review of the ongoing necessity and proportionality of the scheme, generally and in each setting in which it is used. This should include regular assessment of the impact of the scheme on people's human rights, as well as the effectiveness of the scheme in achieving its aim. A sunset provision should be enshrined in any certification scheme, ensuring that the measures are to come to an end on a specified date, or as soon as specific conditions are satisfied, for example when a sufficient number of people have been vaccinated or "herd immunity" has been generated, if sooner.

Recommendation 8: The Scottish Government should openly and transparently consider what regulation of private entities' use of certification is necessary to protect people's human rights. The Scottish Government will have to decide whether or not to allow private actors to require certification for entry to premises or events or to access services, such as housing, work, food, clothing, and cultural or leisure activities, and if so on what terms.

Recommendation 9: To the extent that this is within the devolved competence of the Scottish Government, only use or support the use of COVID-19 status certification for international travel:

- (a) once there is clear scientific evidence: (i) that vaccinations are effective in reducing transmission of the virus, and (ii) of the duration of protection afforded by the vaccines;
- (b) if testing is included as an alternative to vaccination and tests are available, accessible and affordable such that testing is a real, practicable alternative for those who have not been vaccinated; and
- (c) following clear guidance from the World Health Organisation.

Annex: Recent Decision of ECtHR on Vaccine Requirement for Access to Education

In the UK it is rare for vaccination to be required in any setting, including in the workplace. There are instances of this, for example requiring employees of certain NHS Trusts who have direct contact with patients to be vaccinated against Hepatitis B, and the UK Government is currently consulting on mandatory COVID-19 vaccination of care home staff.¹¹² However, generally work-related vaccination for certain roles is strongly encouraged rather than mandated. The First Minister stated in December 2020 that NHS staff would not be required to accept the COVID-19 vaccination, only strongly advised to do so, and there would be no sanctions for anyone declining the offer of a vaccination. She also noted the tradition of encouraging people to be vaccinated rather than mandating it.¹¹³

In terms of legislation, in England and Wales the Public Health (Control of Diseases) Act 1984 provides that measures that can be brought in to protect people from infectious diseases cannot involve requiring someone to undergo a medical treatment, including vaccination.¹¹⁴ This longstanding restriction was incorporated into the UK Coronavirus Act 2020, which provides the Scottish Ministers with the power to introduce measures to protect people from the virus. The Schedule of the Coronavirus Act which specifies the powers of the Scottish Ministers to protect people and control the spread of the virus explicitly states that such measures cannot include requiring someone to undergo a medical treatment, including vaccination.¹¹⁵

However, vaccination could be effectively mandatory in practice if it became impossible to access important areas of life unless vaccinated. This could amount to effective coercion if people were effectively forced through circumstance to be vaccinated against their religious or non-religious protected beliefs, or if they did not want to be vaccinated for other reasons.

This scenario, legally requiring vaccination, and excluding people not vaccinated from important areas of life, were considered by the European Court of Human Rights' recently reported decision in the case of *Vavricka and Others v The Czech Republic*.¹¹⁶ This is the first decision from the ECtHR on the subject of mandatory vaccinations and has understandably attracted a lot of media coverage since the decision was issued on 8 April 2021. While the implications of the decision will require fuller consideration than is within the scope of this briefing, it is important to note a number of points, particularly given recent media headlines.

The ECtHR concluded that a wide “margin of appreciation” applies to decisions taken by national authorities related to mandatory child vaccinations. The margin of appreciation is a concept developed by the ECtHR through which it recognises that, to a greater or lesser degree depending on the right engaged and the particular circumstances, national authorities may be best placed to balance individual rights and community interest in their own country. Where there is a wide margin of appreciation the ECtHR accords the national authorities more discretion in determining national policy. However, the ECtHR remains the ultimate decision-maker and will review the state's decision to determine if the state has adequately justified an interference, as being necessary and proportionate, or has gone beyond its margin of appreciation by failing to give due respect to individual rights. The application of the margin of appreciation is very dependent on the particular context.

The existence of a wide margin of appreciation in relation to national policies on mandatory vaccination, at least with respect to child vaccinations in the context presented to the court in the *Vavricka* case, does not relieve national authorities from their obligation to carefully consider and apply the test for lawful interference with qualified rights

under the ECHR. The balancing exercise required by the necessity and proportionality test must be applied by the state in the national context, with clear justification given for the necessity of the measures and the satisfaction of the proportionality test.

In the *Vavricka* decision the ECtHR decided that the Czech Republic had not exceeded its wide margin of appreciation. The Czech Republic had determined that in its national context, and taking account of scientific evidence relating to infectious diseases and vaccinations in the country, it was necessary and proportionate to (1) require that children be vaccinated against nine infectious diseases and to impose a fine on parents who refused, unless they fell within one of the exceptions, and (2) allow pre-schools to refuse to admit children who had not been vaccinated against these nine infectious diseases.

In reaching the decision that the Czech Republic had not exceeded its margin of appreciation in deciding what measures were necessary, the ECtHR highlighted important facts in the case:

- there were exceptions to the requirement to be vaccinated for people with certain health conditions and for people who declined vaccination on the basis of conscientious objection;
- the law did not force people to have their children vaccinated; it required it but if parents refused the penalty was a fine. The state was not empowered to physically force someone to be vaccinated. The court considered the fine to be relatively moderate.
- the law permitted the exclusion of children from pre-school only. The ability to exclude children ended when the child reached school age. While exclusion from pre-school did mean the loss of an important opportunity to develop, it was within the margin of appreciation for the Czech Republic to allow this limited exclusion in a context in which exclusion resulted as a consequence of parental refusal to follow a legal requirement to have their children vaccinated.

There are significant distinctions in the UK context generally and in relation to the possibility of mandating COVID-19 vaccination, or

effectively coercing people to be vaccinated, which will be relevant to the assessment of necessity and proportionality, including:

- the longstanding approach to vaccination generally across the UK, to positively encourage but not to mandate;
- the varying availability of COVID-19 vaccines;
- the broad areas of life proposed to be covered by COVID-19 certificates, and the potentially significant impact on people who are not able to produce certificates;
- the potential discriminatory effect of a certification scheme.

¹ 'Open consultation COVID-19-Status Certification Review - Call for evidence':

<https://www.gov.uk/government/consultations/COVID-19-status-certification-review-call-for-evidence/COVID-19-status-certification-review-call-for-evidence>

² See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975919/20210405_Roadmap_Reviews_-_Update_-_standard_size_-_FINAL.pdf

³ At the time of writing the website states that the submissions are being considered.

<https://www.gov.uk/government/consultations/COVID-19-status-certification-review-call-for-evidence/COVID-19-status-certification-review-call-for-evidence>

⁴ In its Roadmap update the UK Government noted: "The COVID-19-Status Certification Review has so far gathered evidence from clinical and ethical experts, as well as businesses and their representative organisations. In addition, the public call for evidence has generated over 50,000 responses representing a wide range of opinions."

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975919/20210405_Roadmap_Reviews_-_Update_-_standard_size_-_FINAL.pdf

⁵ <https://www.theguardian.com/world/2021/apr/03/boris-johnson-to-give-go-ahead-for-trials-of-COVID-19-passports>. However see also: [COVID-19 certificates won't be required in live event pilot, organisers say | Health policy | The Guardian](#)

⁶ In February 2021 the Scottish Government referred to the possibility that "a vaccine certificate programme" may have a role to play in "the opening up of international travel and the domestic economy," and noted that it was working on certification issues on a Four Nations basis

<https://www.gov.scot/publications/coronavirus-COVID-19-strategic-framework-update-february-2021/pages/vaccinations/>

⁷ See for example: https://www.instituteforgovernment.org.uk/sites/default/files/publications/COVID-19%20Passports_0.pdf;

[Coronavirus: Dozens of MPs criticise 'divisive' COVID-19 passports - BBC News](#); [COVID-19: Vaccine passports 'unethical', church leaders warn - BBC News](#); Judith Bueno de Mesquita and Wayne Martin, in conversation with Adam Wagner, at Better Human Podcast. Available at <https://podcasts.google.com/?feed=aHR0cHM6Ly9hbmNob3luZm0vcy9INTI3YmVjL3BvZGh3QvcnNz>;

⁸ The Council of Europe also notes that: "such use could prevent the enjoyment of certain fundamental rights by individuals, or even by a large part of the population, who would not hold such a certificate or could not justify immunisation. In addition to the risk of discrimination in relation to the right to freedom of movement, this exclusive access approach could have consequences for the enjoyment of other fundamental rights and freedoms, such as the right to respect for private and family life, the right to freedom of assembly or the right to freedom of religion and it could pose risks of discrimination, or even stigmatisation or arbitrariness, in particular in relation to access to employment, housing or education." <https://rm.coe.int/protection-of-human-rights-and-the-vaccine-pass/1680a1fac4>

⁹ Under Article 2 of the European Convention on Human Rights.

¹⁰ Under Article 12 of the International Convention on Economic, Social and Cultural Rights.

¹¹ The Commission has considered the human rights implications of the COVID-19 outbreak and the measures taken to address it in a number of contexts over the past year:

<https://www.scottishhumanrights.com/COVID-19/>

¹² <https://www.gov.scot/publications/coronavirus-COVID-19-strategic-framework-update-february-2021/pages/protective-measures-and-our-levels-approach/>

¹³ Meaningful participation is one of the PANEL principles, which describe how to adopt a human rights based approach. See <https://www.scottishhumanrights.com/about/#panel-principles-1163> and https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf

¹⁴ <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/#what-is-a-human-rights-based-approach-26557>

¹⁵ As of 23 April 2021 2,758,381 people in Scotland had received the first dose of the COVID-19 vaccination and 949,228 had received their second dose, see

<https://www.gov.scot/publications/coronavirus-COVID-19-daily-data-for-scotland/>

¹⁶ Until very recently people who are pregnant were also advised against taking the vaccine: [COVID-19 vaccination: a guide for all women of childbearing age, pregnant or breastfeeding - GOV.UK \(www.gov.uk\)](#); and guidance by the Royal College of Obstetricians and Gynaecologists at

<https://www.rcog.org.uk/en/guidelines-research-services/coronavirus-COVID-19-pregnancy-and-womens-health/COVID-19-vaccines-and-pregnancy/COVID-19-vaccines-pregnancy-and-breastfeeding/#:~:text=COVID-19%2D19%20vaccines%20should%20only,decision%20based%20on%20individual%20circumstance>. This appears to have changed with recent JCVI guidance:

<https://www.gov.uk/government/news/jcvi-issues-new-advice-on-COVID-19-vaccination-for-pregnant-women>

¹⁷ https://www.publichealthscotland.scot/news/2021/march/vaccine-uptake-by-ethnicity/?fbclid=IwAR2_51n74KVUc95QbIX9ErjLRz5ujqALF9TpWYLI1FpMt3nEACZOVj7YE

¹⁸ See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975919/20210405_Roadmap_Reviews_-_Update_-_standard_size_-_FINAL.pdf

¹⁹ On the potential cost of tests see, for example: <https://www.independent.co.uk/travel/news-and-advice/travel-holiday-uk-testing-COVID-19-b1827829.html> ; <https://www.moneysavingexpert.com/news/2020/12/test-to-release-price-comparison/>

²⁰ Announcement by the First Minister on lateral flow tests. See [Coronavirus \(COVID-19\) update: First Minister's statement – 6 April 2021 - gov.scot \(www.gov.scot\)](#)

²¹ Data and privacy concerns are beyond the scope of this briefing, but these are clearly matters that must be given very careful consideration. There is also suggestion of using biometric facial recognition technology which could raise many other human rights concerns which are beyond the scope of this briefing: <https://www.theguardian.com/politics/2020/may/03/coronavirus-health-passports-for-uk-possible-in-months>

²² <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/7/>

²³ While it may be possible for private parties to create a certification system without any government support, practically this may be very difficult to achieve within a reasonable time without state support. Potential issues include: lack of clear and consistent documentation issued to people who receive the vaccine; time it takes to obtain medical records by writing to GP; inconsistency in documentation produced in response to patient requests. See, for example:

https://www.lexology.com/library/detail.aspx?g=4e6516de-d385-49db-8d2f-d44c87578609&utm_source=Lexology%20Daily%20Newsfeed&utm_medium=HTML%20email&utm_campaign=Lexology%20subscriber%20daily%20feed&utm_content=Lexology%20Daily%20Newsfeed%202021-02-10&utm_term=&fbclid=IwAR2tbEf8oN7MtKbQjMN1nng_I5kRSC1oASvcy9w61PW6kslsqeX7H5uPQg

²⁴ [COVID-19 passports for travel could be ready by 17 May - here's how the UK vaccine certificates could work \(inews.co.uk\)](#)

²⁵ <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-COVID-19-vaccination-for-international-travellers>

²⁶ See <https://www.scottishhumanrights.com/about/#panel-principles-1163> and https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf

²⁷ 'Open consultation COVID-19-Status Certification Review - Call for evidence': <https://www.gov.uk/government/consultations/COVID-19-status-certification-review-call-for-evidence/COVID-19-status-certification-review-call-for-evidence>

²⁸ At the time of writing the website states that the submissions are being considered. <https://www.gov.uk/government/consultations/COVID-19-status-certification-review-call-for-evidence/COVID-19-status-certification-review-call-for-evidence>

²⁹ <https://www.theguardian.com/world/2021/apr/03/boris-johnson-to-give-go-ahead-for-trials-of-COVID-19-passports>

³⁰ In February 2021 the Scottish Government referred to the possibility that "a vaccine certificate programme" may have a role to play in "the opening up of international travel and the domestic economy," and noted that it was working on certification issues on a Four Nations basis <https://www.gov.scot/publications/coronavirus-COVID-19-strategic-framework-update-february-2021/pages/vaccinations/>

³¹ See for example: https://www.instituteforgovernment.org.uk/sites/default/files/publications/COVID-19%20Passports_0.pdf; [Coronavirus: Dozens of MPs criticise 'divisive' COVID-19 passports - BBC News](#); [COVID-19: Vaccine passports 'unethical', church leaders warn - BBC News](#); Judith Bueno de Mesquita and Wayne Martin, in conversation with Adam Wagner, at Better Human Podcast. Available at

<https://podcasts.google.com/?feed=aHR0cHM6Ly9hbmNob3luZm0vcy9INTI3YmVjL3BvZGNhc3QvcnNz>;

³² The Council of Europe also notes that: “such use could prevent the enjoyment of certain fundamental rights by individuals, or even by a large part of the population, who would not hold such a certificate or could not justify immunisation. In addition to the risk of discrimination in relation to the right to freedom of movement, this exclusive access approach could have consequences for the enjoyment of other fundamental rights and freedoms, such as the right to respect for private and family life, the right to freedom of assembly or the right to freedom of religion and it could pose risks of discrimination, or even stigmatisation or arbitrariness, in particular in relation to access to employment, housing or education.” <https://rm.coe.int/protection-of-human-rights-and-the-vaccine-pass/1680a1fac4>

³³ Under Article 2 of the European Convention on Human Rights.

³⁴ Under Article 12 of the International Convention on Economic, Social and Cultural Rights.

³⁵ The Commission has considered the human rights implications of the COVID-19 outbreak and the measures taken to address it in a number of contexts over the past year:

<https://www.scottishhumanrights.com/COVID-19/>

³⁶ <https://www.gov.scot/publications/coronavirus-COVID-19-strategic-framework-update-february-2021/pages/vaccinations/>

³⁷ See <https://www.scottishhumanrights.com/about/#panel-principles-1163> and https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf

³⁸ On recent moves to introduce online ID cards see:

<https://www.theguardian.com/commentisfree/2020/sep/06/uk-online-id-pandemic-digital-identity-system>

³⁹ On the suggestion of using facial recognition technology see:

<https://www.theguardian.com/politics/2020/may/03/coronavirus-health-passports-for-uk-possible-in-months> For a recent overview of human rights issues raised by the use of technology, in the context of the development of Scotland’s digital strategy, see: [submission-to-scottish-government-on-consultation-on-the-digital-strategy-for-scotland-final-for-web.pdf](https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf) (scottishhumanrights.com)

⁴⁰ *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91

⁴¹ *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

⁴² *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I).

⁴³ *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III

⁴⁴ *Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007-I, and *A, B and C v. Ireland* [GC], no. 25579/05, § 212, ECHR 2010); *PARADISO AND CAMPANELLI v. ITALY*, (Application no. 25358/12), Judgment, 24 January 2017, paragraph 159

⁴⁵ *Niemietz v. Germany*, § 29;

⁴⁶ *C. v. Belgium*, § 25; *Oleksandr Volkov v. Ukraine*, § 165)

⁴⁷ *Niemietz v. Germany*, § 29; *Bărbulescu v. Romania* [GC], § 71

⁴⁸ *Sidabras and Džiautas v. Lithuania*, § 47; *Bigaeva v. Greece*, §§ 22-25;

⁴⁹ *Z v. Finland*, § 95; *Mockutė v. Lithuania*, §§ 93-94

⁵⁰ *W. v. the United Kingdom*, Commission decision

⁵¹ E.g. contentious objection to corporal punishment, *Campbell & Cosans v UK*

⁵² <https://www.bbc.co.uk/news/uk-56781724>

⁵³ *Kiyutin v. Russia*, 2011, § 57

⁵⁴ https://www.publichealthscotland.scot/news/2021/march/vaccine-uptake-by-ethnicity/?fbclid=IwAR2_51n74KVUc95QbIX9rErtLRz5ujqALF9TpWYLI1FpMt3nEACZOVj7YE

⁵⁵ <https://www.publichealthscotland.scot/news/2021/march/vaccine-uptake-by-ethnicity/?fbclid=IwAR3ud8luEZW7p3lfsBqDcNe3m4aUYtzOBXMxaUmbGnuAQwXJAhSr7GR9m-0> ; https://beta.isdscotland.org/media/8209/21-03-24-COVID-19-publication_report.pdf

⁵⁶ <https://www.gov.uk/government/news/consultation-launched-on-staff-COVID-19-vaccines-in-care-homes-with-older-adult-residents>

⁵⁷ See under “April 2021”: [Consultation responses | Equality and Human Rights Commission](https://www.equalityhumanrights.com/equalityhumanrights.com) (equalityhumanrights.com)

⁵⁸ For more information see: <https://www.scottishhumanrights.com/projects-and-programmes/treaty-and-international-work/international-treaty-monitoring/the-international-covenant-on-civil-and-political-rights-iccpr/>

⁵⁹ UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9 <https://www.refworld.org/pdfid/45139c394.pdf>

⁸² <https://www.bmj.com/content/372/bmj.n287>; World Health Organization. SARS-CoV-2 antigen-detecting rapid diagnostic tests: an implementation guide. 21 Dec 2020. <https://www.who.int/publications/i/item/9789240017740>.

⁸³ <https://www.bmj.com/content/372/bmj.n287>

⁸⁴ <https://www.theguardian.com/world/2021/apr/15/rapid-COVID-19-testing-in-england-may-be-scaled-back-over-false-positives>

⁸⁵ <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-COVID-19-vaccination-for-international-travellers>

⁸⁶ <https://blogs.bmj.com/bmj/2021/04/01/how-to-lose-friends-and-alienate-people-on-the-problems-of-vaccine-passports/>, see also https://blogs.bmj.com/bmj/2021/03/30/COVID-19-vaccine-passports-and-vaccine-hesitancy-freedom-or-control/?fbclid=IwAR07bwuD9iPpL90k1Yoyx84hRzr_vnEDfWdWX6GiSGplGC6XhS4XFR5aZHs ; https://www.instituteforgovernment.org.uk/sites/default/files/publications/COVID-19%20Passports_0.pdf

⁸⁷ https://blogs.bmj.com/bmj/2021/03/30/COVID-19-vaccine-passports-and-vaccine-hesitancy-freedom-or-control/?fbclid=IwAR07bwuD9iPpL90k1Yoyx84hRzr_vnEDfWdWX6GiSGplGC6XhS4XFR5aZHs

⁸⁸ <https://www.independent.co.uk/news/world/middle-east/michael-gove-israel-vaccine-passport-b1834639.html>

⁸⁹ See for example [COVID-19: Vaccines alone will not stop COVID-19 spreading - here's why - BBC News](https://www.bbc.com/news/health-57888888)

⁹⁰ <https://www.instituteforgovernment.org.uk/publications/COVID-19-passports>

⁹¹ <https://www.instituteforgovernment.org.uk/publications/COVID-19-passports>; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/977097/S1179_SAGE_85_Meeting.pdf

⁹² Data and privacy concerns are beyond the scope of this briefing, but these are clearly matters that must be given very careful consideration. There is also suggestion of using biometric facial recognition technology which could raise many other human rights concerns which are beyond the scope of this briefing: <https://www.theguardian.com/politics/2020/may/03/coronavirus-health-passports-for-uk-possible-in-months>

⁹³ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/7/>

⁹⁴ On the potential cost of tests see, for example: <https://www.independent.co.uk/travel/news-and-advice/travel-holiday-uk-testing-COVID-19-b1827829.html> ; <https://www.moneysavingexpert.com/news/2020/12/test-to-release-price-comparison/>

⁹⁵ Announcement by the First Minister on lateral flow tests. See [Coronavirus \(COVID-19\) update: First Minister's statement – 6 April 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/2021/04/06/coronavirus-covid-19-update-first-ministers-statement-6-april-2021)

⁹⁶ On the potential cost of tests see, for example: <https://www.independent.co.uk/travel/news-and-advice/travel-holiday-uk-testing-COVID-19-b1827829.html> ; <https://www.moneysavingexpert.com/news/2020/12/test-to-release-price-comparison/>

⁹⁷ E.g. <https://www.boots.com/COVID-19-testing>

⁹⁸ According to the WHO 'herd immunity', also known as 'population immunity', is the indirect protection from an infectious disease that happens when a population is immune either through vaccination or immunity developed through previous infection: [Coronavirus disease \(COVID-19\): Herd immunity, lockdowns and COVID-19 \(who.int\)](https://www.who.int/news-room/feature-stories/detail/herd-immunity-lockdowns-and-covid-19)

⁹⁹ For more information about the duty to protect and about business and human rights see: <https://www.scottishhumanrights.com/our-law-and-policy-work/business-and-human-rights/#business-and-human-rights-4958>

¹⁰⁰ The obligation on governments to protect against unlawful interference with human rights by private actors was not acknowledged in the UK Government's Roadmap update, where it stated: "Likewise, in the UK, businesses and other organisations are able to ask customers for proof of COVID-19 status in order to access their premises, as long as they are compliant with equalities legislation. The Government believes that introducing a ban on this would in most cases be an unjustified intrusion on how businesses choose to make their premises safe - although, as set out below, there may be exceptions where the Government needs to intervene to ensure equitable access to essential services. It is therefore right that the Government provides a means of easily demonstrating COVID-19-status, in order to ensure UK citizens and residents are not denied opportunities to travel or attend certain venues or events."

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/977097/S1179_SAGE_85_Meeting.pdf

[5919/20210405 Roadmap Reviews - Update - standard size - FINAL.pdf](#) It is correct that there are important equalities law considerations, as outlined by the Equality and Human Rights Commission, See under “April 2021”: [Consultation responses | Equality and Human Rights Commission \(equalityhumanrights.com\)](#) However, there are also important human rights considerations, as outlined in this briefing. The two sets of obligations sit side by side and must be considered together.

¹⁰¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paragraph 19

¹⁰² UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paragraph 15

¹⁰³ See under “April 2021”: [Consultation responses | Equality and Human Rights Commission \(equalityhumanrights.com\)](#)

¹⁰⁴ See [Vaccination requirements and recommendations for international travellers; and malaria situation per country – 2020 edition \(who.int\)](#)

¹⁰⁵ See further NHS advice at [Yellow fever - Vaccination - NHS \(www.nhs.uk\)](#)

¹⁰⁶ WHO, Interim position paper: considerations regarding proof of COVID-19 vaccination for international travellers, 5 February 2021. Available at <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-COVID-19-vaccination-for-international-travellers> Similarly, the Science in Emergencies Tasking – COVID-19 (SET-C) group of The Royal Society has issued a report in which it has argued that there are 12 criteria that should be satisfied for the existence of COVID-19 vaccine passports. Among such criteria, The Royal Society has emphasised that more information is needed about: i) the efficacy of vaccines in preventing infection and transmission by the currently circulating viruses, including genetic variants; and, ii) duration of protective immunity (both to illness and infectiousness) to determine frequency of vaccine passport renewal. The Royal Society, Twelve criteria for the development and use of COVID-19 vaccine passports, 14 February 2021. Available at <https://royalsociety.org/-/media/policy/projects/set-c/set-c-vaccine-passports.pdf>

¹⁰⁷ Similarly, the Council of Europe has noted “the importance of stepping up efforts to produce and administer vaccines in an equal manner, in line with the requirements of the Convention on Human Rights and Biomedicine (Oviedo Convention), so that restrictions on individual freedoms can gradually be reviewed as broader immunity is achieved among populations.” The UK is not party to the Oviedo Convention, but it is an important human rights treaty. https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a223ef

¹⁰⁸ WHO, Interim position paper: considerations regarding proof of COVID-19 vaccination for international travellers, 5 February 2021. Available at <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-COVID-19-vaccination-for-international-travellers>

¹⁰⁹ For example: [COVID-19: Digital green certificates | European Commission \(europa.eu\)](#)

¹¹⁰ [COVID-19 passports for travel could be ready by 17 May - here's how the UK vaccine certificates could work \(inews.co.uk\)](#)

¹¹¹ See <https://www.scottishhumanrights.com/about/#panel-principles-1163> and https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf

¹¹² <https://www.gov.uk/government/consultations/COVID-19-status-certification-review-call-for-evidence/COVID-19-status-certification-review-call-for-evidence>

¹¹³ <https://www.scotsman.com/health/coronavirus-scotland-nhs-staff-will-not-be-obliged-take-COVID-19-vaccine-3055641>

¹¹⁴ Public Health (Control of Diseases) Act 1984, Section 45E: <https://www.legislation.gov.uk/ukpga/1984/22#:~:text=Public%20Health%20%28Control%20of%20Disease%29%20Act%201984%201984.give%20effect%20to%20recommendations%20of%20the%20Law%20Commission.>

¹¹⁵ Coronavirus Act 2020, Schedule 19, Section 3: <https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

¹¹⁶ Judgement: <https://www.courthousenews.com/wp-content/uploads/2021/04/VAVRICKA-CZ.pdf> ; press release: <https://hudoc.echr.coe.int/eng-press#?i=%22itemid%22:%22003-6989051-9414707%22> ; Q&A: https://echr.coe.int/Documents/Press_Q_A_Vavricka_Others_ENG.pdf