

Mr Humza Yousaf MSP, Cabinet Secretary for Health & Social Care  
Mr John Swinney MSP, Cabinet Secretary for Covid Recovery

By email: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

22 September 2021

Dear Mr Yousaf MSP and Mr Swinney MSP

## **COVID-19 Vaccination Certification**

We write further to our engagement with the Scottish Government in relation to the human rights considerations relevant to the possibility of using COVID-19 vaccination certification. We are concerned that the Scottish Government has decided to mandate COVID-19 vaccination certification for entry to certain venues and events without adequately addressing the points set out in our April briefing: [Covid-19 Status Certificates: Human Rights Considerations](#) and discussed with Scottish Government officials.

We welcomed the Scottish Government's initial approach to the possibility of using vaccine certification, its public recognition of the human rights concerns related to certification and confirmation that it was adopting a cautious approach. This is appropriate given that requiring evidence of vaccine status to secure entry to premises or events engages a number of human rights, such as the rights to private life, culture and freedom of thought, conscience and religion. Use of vaccine certification will have a discriminatory impact on the enjoyment of rights for those who are not vaccinated, including on the basis of religious or other protected beliefs. Take-up of COVID-19 vaccines is lower among some groups, including people from lower socio-economic backgrounds, people from certain ethnic minority communities, refugees and people seeking asylum. Use of vaccine certification will therefore have a disproportionate impact on these groups. Considering the rights that will be interfered with and the groups particularly

impacted, the Commission agrees with the Council of Europe that the possible use of vaccine certification should be considered with the “[utmost caution](#)” and was pleased that the Scottish Government appeared to agree.

We noted the announcement on [1<sup>st</sup> September](#) that the Scottish Government intended to require evidence of vaccine status for entry to certain spaces. The Commission was concerned that this announcement was not accompanied by a full and transparent human rights assessment nor preceded by public consultation.

We were further concerned to see the launch of vaccine certificates on 2<sup>nd</sup> September, without any regulation of their use and before the Scottish Parliament had been asked to consider the proposal. On 9<sup>th</sup> September the Scottish Parliament was asked to approve the proposed use of vaccine certification without a full and transparent human rights assessment from the Scottish Government.

Given this government’s stated [commitment to mainstream and embed human rights across all areas of government work](#), we are concerned about the approach taken to this issue given the human rights impacts identified.

While the Scottish Government has [undertaken](#) to “publish a full assessment of the evidence for certification, based on the four harms model that [it has] used throughout the pandemic, in advance of the scheme coming into force” it is not clear that this will address the tests of necessity and proportionality, as required by human rights law, nor set out the evidence relied upon. The Scottish Government has [also stated](#) that it intends for vaccine certification to come into force on 1<sup>st</sup> October, leaving very little time for review of any detail contained in draft regulations when they are produced.

### Necessity and Proportionality

Given that use of vaccine certification interferes with human rights, the Scottish Government must ensure that their use is: (1) necessary to

achieve a pressing social aim, and (2) proportionate, going no further than necessary to achieve that aim.

### *Necessity*

The Scottish Government must clearly identify the pressing social aim it is seeking to address with this measure, and the evidence it relies upon in concluding that this measure is necessary to achieve that aim.

[Reference has been made](#) both to reducing transmission of COVID-19 and encouraging uptake of the vaccine, particularly among young people. The Scottish Government should be specific in setting out each aim and the evidence relied upon in concluding that mandating vaccine certification in these settings is necessary to achieve those aims.

### *Proportionality*

In order to assess proportionality the Scottish Government must demonstrate that it has fully considered the potential negative impact on people's human rights and balanced that against the wider societal interest of introducing the measure. It is not clear from the Scottish Government's announcement or subsequent statements, what focused engagement it has undertaken in order to understand the impact this measure could have, particularly on groups among whom vaccine uptake is lower.

Proportionality requires that the measure taken goes no further than necessary to achieve that aim in terms of its impact on human rights. If there is an alternative measure that could achieve the stated aim which involves less interference with people's human rights, that measure ought to be adopted. Another essential element of proportionality is that the measure that interferes with human rights is time-bound, lasting no longer than strictly necessary.

## Possible Extension of Use

Having made COVID-19 certificates available, including in electronic form, the Scottish Government must ensure that they are not used in a way that interferes with people's rights unnecessarily or disproportionately. This may necessitate prohibiting their use in settings where it has not been determined that their use is necessary and proportionate.

The Scottish Government has expressly referred to the possibility of introducing COVID-19 passports in [other areas](#). If considering the introduction of vaccine passports in other areas, the Scottish Government should openly and transparently carry out the necessity and proportionality analysis set out above, including by hearing directly from people who would be excluded from those spaces, in order to properly understand the impact on them before weighing that against the societal interest.

## Conclusion

The Scottish Government has a duty to take reasonable steps to minimise the risk to life and protect health. However, the measures taken to do so must also comply with the UK's, and in turn Scotland's, human rights obligations. The Commission is urging the Scottish Government to take the necessary steps to demonstrate compliance with human rights requirements, aligning practice with its stated commitment.

Yours sincerely



Judith Robertson  
**Chair**