OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Recovery Committee

Thursday 23 September 2021

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 23 September 2021

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COVID-19 RECOVERY COMMITTEE

5th Meeting 2021, Session 6

CONVENER

*Siobhian Brown (Ayr) (SNP)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)
*John Mason (Glasgow Shettleston) (SNP)
*Alex Rowley (Mid Scotland and Fife) (Lab)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alex Cole-Hamilton (Edinburgh Western) (LD)
Rob Gowans (Health and Social Care Alliance Scotland)
Professor Jason Leitch (Scottish Government)
Michael Matheson (Cabinet Secretary for Net Zero, Energy and Transport)
Professor Sir Jonathan Montgomery (Ada Lovelace Institute)
Judith Robertson (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Sigrid Robinson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

COVID-19 Recovery Committee

Thursday 23 September 2021

[The Convener opened the meeting in private at 08:30]

09:00

Meeting continued in public.

Decision on Taking Business in Private

The Convener (Siobhian Brown): Good morning, and welcome to the fifth meeting in 2021 of the COVID-19 Recovery Committee. We are joined by Alex Cole-Hamilton MSP, who is not a member of the committee but is attending due to his interest in the proceedings. I welcome Alex to the meeting and invite him to declare any interests that are relevant to the committee's remit.

Alex Cole-Hamilton (Edinburgh Western) (LD): Thank you, convener. I am grateful to be here. I have no interests to declare.

The Convener: Item 3 is to decide whether to take in private item 7, which is consideration of the evidence that we have heard. Do members agree to take item 7 in private?

Members *indicated agreement.*

Vaccination Certification

09:00

The Convener: Next, we will take evidence from a range of stakeholders on vaccination certification. I welcome to the meeting Professor Sir Jonathan Montgomery, from the Ada Lovelace Institute; Rob Gowans, policy and public affairs manager at the Health and Social Care Alliance Scotland; and Judith Robertson, chair of the Scottish Human Rights Commission.

The Scottish Government announced on 1 September its intention to introduce a vaccination certification scheme, to be in place by 1 October. The purpose of this meeting is to take evidence from stakeholders on the proposed scheme. Some of the scheme's details are still to be worked out, so we intend to listen to your views and to feed them back directly to the Scottish ministers in our regular evidence sessions with them. Any issues that you raise will also inform our scrutiny of any relevant legislation that is introduced to give effect to the scheme. As such, your input is valuable to the committee and we are pleased to hear from you.

What are the key priorities that should be embedded in the scheme to make it work?

Professor Sir Jonathan Montgomery (Ada Lovelace Institute): I am a professor of healthcare law at University College London. That is my day job but, since April 2020, I have been working with the Ada Lovelace Institute on its projects on the use and governance of vaccination passports.

A key point is the need for clarity on how it is thought that vaccination certification will help society to recover from Covid. There are two main ways in which it might do that. Certification might be a protection measure to try to reduce the spread. If so, we might expect not only vaccination certification but the use of negative test status and proof of previous infection as indicators as to whether it is likely that an individual will pass on the virus. Even if such measures are put in place, that will not make things entirely safe. We know that, even with vaccination passports and testing, about 10 per cent of attendees at the Cornish Boardmasters festival—about 5,000 people—caught the virus.

If vaccination certification is about protection, we need to ensure that it is an effective way of protecting the community from the spread and to be clear about why the particular areas that the proposed scheme focuses on are seen to be more dangerous and so more amenable to increased safety. That is the first way in which it might be useful to use passports.

The second is that passports could operate as an incentive in order to increase vaccination rates. As the committee will know, the vaccination programme in Scotland has been very successful. Vaccination rates are very high among the whole population, but there is an argument that they are lower in the 18 to 29 age group, and most of the proposed venues for certification seem to be popular with that group. In that group, 76 per cent of people have had a first dose, but only 62 per cent are fully vaccinated. However, that group has not had as much time to get vaccinated as others have had.

Vaccination certification could incentivise that group to get vaccinated, but it is also possible that it could increase distrust of the vaccination programme, so it is important to understand why people are hesitant about being vaccinated. The scheme could also give a false sense of security if it is thought that vaccination reduces the need for people to take other protective measures, such as hand washing, social distancing and mask wearing.

Key things came out of the Ada Lovelace Institute's work on whether vaccination passports were effective in relation to those two main arguments in their favour. We also identified a number of concerns in terms of segregation, stigma and social exclusion, particularly in groups that already suffer other forms of exclusion. I am sure that the other witnesses will say a little bit more about that.

The final point from the Ada Lovelace work is the importance of being very careful about the proportionality test that we need to apply. We cannot really talk sensibly about vaccination passports in the abstract, but we can talk about their use in particular contexts and at particular times.

Scotland's scheme is focused on particular areas. A sunset clause is proposed, which the institute supports. That would ensure that passports would not be allowed to merge into the infrastructure in the long term. A regular review process is also proposed.

The committee might need to think about whether there are relevant factors around background community infection—the replication rate. There is a reduction of cases in Scotland. That might reduce the need for introducing vaccination certification. That seems to be an important calculation in terms of the work that the Government needs to look at.

Rob Gowans (Health and Social Care Alliance Scotland): We seek greater clarity on a number of points, particularly around the scope, purpose and length of the scheme, the data protection and privacy measures that would be taken, the controls that would be put in place to prevent discriminatory impact on specific population groups and the grounds for exemption.

It is important that the scheme should take an intersectional, equalities and human rights-based approach, and that it does not perpetuate or exacerbate existing inequalities, or infringe on people's rights.

There are a number of important considerations around inclusive communications. Communications on the scheme should always be inclusive and accessible, and a digital choice approach should be implemented, rather than the scheme being a digital system in its entirety.

Also, issues around vaccine hesitancy should be recognised, understood, and considered sensitively and compassionately.

Judith Robertson (Scottish Human Rights Commission): It is important to say from a human rights perspective that the Scottish Government has a duty to take reasonable steps to minimise the risks to life caused by the virus and to protect health. However, the measures taken to do so must comply with the United Kingdom's and, in turn, Scotland's human rights obligations.

A number of human rights come into play with the use of Covid-19 vaccination status certificates in Scotland, including the rights to family and private life, culture, and freedom of thought, conscience and religion. Interference with those rights is permitted only in exceptional circumstances and I think that you might hear quite a lot of repetition about that, in different ways, from the witnesses this morning. Having heard Professor Montgomery and Rob Gowans's initial views, I think that you will hear the same themes coming through our contributions.

The interference with rights through the use of certification 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, as has been mentioned. It must take 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.

The Government's obligation is to ensure that those rights are appropriately balanced and that the impact on individuals through the introduction of the scheme is understood, explored, and reduced and mitigated to the greatest extent. On that basis, because the implementation of a certification scheme would interfere with people's human rights, the Government must first demonstrate, before proceeding with any such scheme, that the scheme is necessary to achieve the legitimate aims of protecting life and promoting

health and, secondly, must show that any interference with people's human rights is proportionate and goes no further than is necessary to achieve the aim. Those are the two important tests that the Government must engage with when proposing to interfere explicitly with people's human rights as a result of Government policy.

As Professor Montgomery outlined, reference has been made to the aims of the scheme being both to reduce the transmission of Covid-19 and to encourage the uptake of the vaccine, particularly among young people. The Government should therefore be specific in setting out each aim and the evidence that it relied upon in concluding that mandating vaccination certification in those settings is necessary to achieve those aims. As we go through the evidence session, I will further explore the implications of that test and how it can be assessed by the Government.

The Convener: Vaccination passports are being rolled out across the world at the moment. I think that it would be irresponsible, after the past 18 months, not to learn lessons and not to put measures in place to prevent pressure on the national health service and to prevent further lockdown.

Professor Montgomery, are there examples of other countries in the world that are implementing vaccination passports successfully?

Professor Montgomery: It is challenging to answer that question because everyone has a slightly different vaccination passport. The Ada Lovelace Institute has collected a wide range of examples, which you can see links to in our written submission.

The example that was discussed most during our expert deliberations was that of Israel, which moved quite early to introduce its green pass. The pass gave the results of antibody tests showing natural immunity, as well as the results of any current testing and a vaccination status. The green pass was kept in place for a period but was later withdrawn because it had been effective and because people's general response had reduced transmission. Israel is now considering reintroducing the pass.

It is important to understand what contribution the vaccination passport made to the response to Covid. It is difficult to translate that to the Scottish situation. It is clear that people across the world are looking at the ability to know people's vaccination status. The use that is made of that information varies widely. It is important to identify places with similar contexts. Israel moved early to have good vaccination coverage and used the green pass to get people back into a more normal life, then sought to withdraw the pass but now, as Covid cases are increasing, is toying with reintroducing it.

That might tie in with what you are asking. You and asking at what point it might be appropriate to deploy vaccination certificates. You cannot say that other countries are a success or failure. Passports are part of a package of measures aimed at allowing normal life to resume.

Murdo Fraser (Mid Scotland and Fife) (Con): I will follow on from the convener's questions and her comments about evidence. Perhaps Professor Montgomery could answer first.

To put the debate into context, there are people who are ideologically opposed to vaccination passports in all circumstances. Most people are not in that category. The replies that we have heard today show that there is an issue of balance. There are human rights considerations to the introduction of vaccination certification, but human rights must be balanced against the public health objectives of any such scheme.

You have all talked to a degree about evidence. My question is to Professor Montgomery in the first instance. Is the evidence base solid and has the Scottish Government made a compelling case for the introduction of vaccination passports in the short timescale proposed? Does that evidence outweigh people's human rights concerns at this point?

09:15

Professor Montgomery: There are different segments of the evidence that we need to think about. There is the evidence that relates to how robust the scientific basis is for certifying someone's vaccination status. When Ada started doing its work, we were not very confident about that. If we focus just on vaccination status, we can now be pretty confident that we can record people's status. However, in the face of the delta variant, the impact of being vaccinated, in terms of the vaccination certificate, is not nearly as strong as people might think. A certificate cannot really be described as a safe pass that certifies that because you have been vaccinated, you are in a different category from everybody else and are less likely to catch the disease and that, if you do catch it, you are much less likely to pass it on. There is a set of issues to do with the science that make us more cautious than we thought we might be about whether certification will identify people who do not put others at risk.

The second bit of evidence is about which areas the Government has chosen to focus on as needing a vaccination certificate. I have not seen, although I have not had long to look for, the detail of why some categories are thought to present a higher risk of transmission than others. You would

want evidence that there was a significant difference between the transmission rates in those areas and the rates in other areas if we were going to introduce vaccination certification in those contexts. You would also want to understand the alternatives. If venues and events would be closed or banned for public safety reasons without certification and certification made it possible to open them, that would be a very different situation from one in which they were thought to be made just a bit more safe than they would otherwise be. It would be arguable that it was disproportionate to introduce certification if there was not also a case for closing those places unless only certificated people went there. I have not seen that evidence, but I have not had much chance to look for it. There might be other people in this session who are better placed to comment on that.

The final point is that we do not really have good evidence about how people respond to certification requirements. The logic of the incentivisation argument is that they will respond to it by saying "Well, this tips the balance in favour of getting vaccinated." However, they might respond to it by choosing to avoid those areas, in which case we would be no better off in terms of reopening them. They might also respond with increasing distrust of the vaccination programme and Government advice, because they feel that they have been coerced. They might find, too, that we increase social exclusion without any net benefits. We do not have particularly good evidence on the effect of that, but we have good reason to think that that is a concern. However, other people giving evidence here are probably better placed to address those questions.

Murdo Fraser: Thank you, Professor Montgomery. Before I ask Judith Robertson to comment, I will try to draw together what you just said. I do not want to put words in your mouth, but if I were to sum up what you said, it is that in your view the case has not yet been made for the introduction of vaccination certification in Scotland.

Professor Montgomery: I would say that the case has not been articulated in the way that I would look for. I would be nervous to say that it could not be articulated, but I have not seen that set out as yet. Obviously, there has been only a short period in which there has been an opportunity to set that out, so it could be pulled together, but I have not yet seen it.

Murdo Fraser: Thank you. I ask Judith Robertson the same question.

Judith Robertson: From our perspective, the case has not yet been made, or, if it has, it is not in the public domain. One of the key aspects in relation to human rights considerations is that the evidence upon which decisions are being made should be placed in the public domain, not only so that the basis on which the Government is making decisions is clear, but so that that can be interrogated by a wider element of the population. The questions that Professor Montgomery has extremely ably laid out have not been articulated by the Government. There is not clarity about the evidence that is being used to make decisions.

In addition to what Professor Montgomery said, the final thing that I would say is that we have not seen any evidence of engagement with people who are most likely to be impacted by the decision, which is people in the age groups that are most impacted and those who are least likely to have taken up the offer of a vaccination for whatever reason, whether that is a matter of conscience, inaccessibility or due to a general lack of faith in the system. We know that, often, those people are the most vulnerable to Covid and its impacts. For us, in taking a broad human rights-based approach to making decisions in that sphere, engagement with the people most affected by the potential impacts of the decision is crucial to better understand the impact and to either mitigate it or to decide that, on balance, it is not a decision that we want to move forward on.

Our experience, and that of many others, is that engaging with those most affected could address what might be seen as a lack of evidence for the decision on vaccination certification and mitigate the potential increase in resistance to vaccination uptake that that decision might cause. If there had been a clear discussion and if feedback from those most affected had been that it was a positive move that would incite them to take up vaccination, that would be good evidence that the Government could use to support its decision. As far as we are aware, that has not happened. That does not mean to say that it has not happened, but, at the moment, we are not aware that it has.

All of that is about the description of something as "necessary". Is that a necessary intervention and interference with people's rights? Is it justified on a public health basis? We are looking to see that evidence published, so that that interrogation can be demonstrated to have happened and so that there is that understanding in the public sphere.

Murdo Fraser: I will ask the same question to Rob Gowans, but I will throw in something else. In the Health and Social Care Alliance Scotland's written submission, you ask for a

"thorough and robust Equality Impact Assessment ... and a Human Rights Impact Assessment ... on the impact of introducing vaccine passports".

You also ask that any scheme is

"co-produced with disabled people, people living with long term conditions, unpaid carers".

To your knowledge, have either of those things been done, prior to the introduction of the scheme?

Rob Gowans: We have not seen those produced yet. We want the Scottish Government, as part of introducing the scheme, to carry out and publish those assessments. Certainly, we are not aware that the scheme has been co-produced or that there has been consultation with disabled people, people with long-term conditions, unpaid carers and other groups, such as people who are digitally excluded and different age groups.

That is really important with regard to building the evidence base and allowing us to understand what impact the scheme would have on people's rights and whether the aims of the scheme outweigh those rights. Co-production and consultation are important, because some of the issues can be ironed out by working with the people who are most likely to be affected. We certainly want that to be done and the results to be published. The committee might wish to take up that issue with the Scottish Government.

Murdo Fraser: A few moments ago, we were discussing the situation in other countries. I am aware that in France, for example, people are given the opportunity to provide a negative test result as an alternative to vaccination certification. If the Scottish Government were to go down that route, would that alleviate the concerns that you have about the human rights issues that we have discussed?

Judith Robertson: Providing choice, or broadening the scope of the scheme and the way that it is undertaken, has the potential to mitigate things, but that has to be checked and understood, taking into account the impact on people for whom testing is an additional burden.

There are a range of issues at play but, in short, we think that such a provision could be helpful. However, we do not know why that additional measure has not been brought in. The evidence is not there to say, one way or another, whether the measure has been considered and, if it has been, why and on what basis it has not been included. The short answer is yes. That suggestion provides an alternative that I think is positive, but we do not know why it has not been included.

Professor Montgomery: That would certainly mitigate some of the risks. Our evidence from public deliberation—as well as considering what is happening in other countries—is that it is important to understand the infrastructure around the provision of certification. If it is easy to get tested or vaccinated, there are choices, and they are easy to implement. If those things are hard to do, having that choice does not make much difference. People need to be persuaded that what is on offer to them is a realistic choice and not one that is very close to coercion. That depends not just on accessibility to testing and what gets on to the certificate; it depends which areas of someone's life the certification relates to.

Those things are all part of the matrix of questions that add up to whether it is proportionate to force people to make choices that they may wish they did not have to make. However, it would certainly be an improvement if there were alternatives to using vaccination status, given the proportionality and balance.

Rob Gowans: It would be positive if alternative measures were set out. One of the issues that we have with the current scheme is that there is not a great deal of information available about the evidence and particularly information on exemptions and who would be included and not included. Alternative measures might potentially be helpful with that.

John Mason (Glasgow Shettleston) (SNP): We have a situation now in which our hospitals are struggling and the Scottish Ambulance Service is swamped. We must take action. From listening to your answers so far, I wonder whether it would be cleaner and neater from a human rights and equalities point of view just to close all the nightclubs, stop all the football matches with attendance over 10,000 and stop all the concerts. That would prevent any human rights issues, would it not? It would just be cleaner. Would that be your preference?

09:30

Rob Gowans: I think that that gets to the point about the evidence for and clarity of the scheme—it is about whether the risks, including the risks to public health, outweigh the human rights considerations, and how that compares to the relative safety of opening venues with or without certification. It comes down to the evidence and clarity surrounding the scheme.

John Mason: Ms Robertson, should we just close everything?

Judith Robertson: That is a test for the Government to assess. It is not what we are saying. We are saying that, to assess whether the impact of this interference in people's rights is proportionate, reasonable and evidence based, and can therefore be justified when balanced against the economic and social harms that come into play—[*Inaudible*.]

The Convener: I think that Ms Robertson's screen has frozen.

John Mason: We have lost Ms Robertson. Maybe Professor Montgomery can answer.

Judith Robertson: —the necessity of the proportionate nature of it, and whether that is a valid contribution to make.

That is the basis on which the human rights analysis has to be understood. If the wider social harms pan out as being of far greater significance than the impact on a potentially relatively small number of individuals, the decision is potentially justifiable.

Alternatively, can the impact on those individuals be mitigated by the various actions that we have been discussing, such as allowing the production of a negative test? Clearly, some thought has gone into mitigating the digital nature of the proposal by allowing the production of paper evidence of people's vaccination status. Some measures have been thought of that would reduce the impact on people's rights. However, from our perspective, it is not clear whether or how those things have been weighed up from a human rights perspective, and that is what we are saying needs to be put into the public domain.

It is not a yes or no—[*Inaudible*.] It is about whether we have the information to make the decision, and whether the Government has the information to make that decision across the board.

John Mason: On that point, we have had restrictions for the past year and a half, most of which have been brought in at two or three days' notice. This one is the slowest that we have ever done; it has had the most consultation and discussion of any of the restrictions that we have had up to now. Do you have the same criticism of all the other restrictions that we have had, such as closing schools? Have all of those failed from a human rights perspective?

Judith Robertson: I would not say that they have failed from a human rights perspective—that is the extreme end of the argument—but I would say that they have not fully taken into account all the human rights implications. We totally respect that a lot of decisions were made quickly and that, when the human rights implications of some of the decisions played out in the public sphere, they were reviewed and new decisions were made.

In this instance, however, there has been time. The commission prepared a briefing on the topic in April, and it has been discussed over several months. We have been having conversations with Government on some of the measures that have been described, to make the process more rights compliant. There has been time. At this point in the process, we are concerned. We have written to the minister to say that we are concerned that the decision was made quickly, because there has been time for those deliberations.

John Mason: Perhaps Professor Montgomery will come in. I have been looking at the Ada Lovelace Institute paper from May, in which there was an emphasis on things such as testing behavioural impacts. That is all very well if we have time but, surely, we do not have time to do all that kind of stuff when we have to act quickly.

Professor Montgomery: It is very important that we can reopen all areas of our social and economic life, but the question that I have seen no answer to is: how does reopening those events without vaccination passports differ from reopening them with vaccination passports? Only when you can think that through will you be able to work out whether you need vaccination passports or whether you have reached the stage in the pandemic when it is safe to reopen. Moreover, you cannot undertake the regular review process—a very good idea that has been built into the proposals—if you do not understand your metrics for working out the need for vaccination passports. You just will not be able to tell whether it is time to lift the restrictions.

You need to think through, for example, the background community infection rates, because you should not open certain events when infection rates are high and rising in the community and if those events will fuel that rise. If, on the other hand, infection rates in the community are reducing, you will want to ensure that opening events will not slow that reduction. That is the question with regard to opening or reopening events.

As for the human rights dimension, this kind of reopening is differential, in that it enables some groups to get access to things earlier than others. It is a measured and planned process. What we are saying to those who cannot get immediate access is, "It will come, but you can't have it just yet, because either it's not safe for you or it's not safe for the community." If you can articulate the plan and work out what tells you whether it is working, you will have a good framework for assessing the impact of vaccination passports. However, until those things are articulated, it is hard to know what is success and what is failure.

I hope that that goes at least part way towards answering your question.

John Mason: But we have already opened up all those things. It is not a question of opening them with the passports in place; we have opened them up already, and now the hospitals and ambulances are struggling. It might not be fair to ask you this question, but is there some other action that we should take instead of introducing vaccination passports?

Professor Montgomery: Perhaps I can make an observation. I cannot talk about the situation in

Scotland but, as chair of the Oxford University Hospitals NHS Foundation Trust in England, I can tell you that, although our hospital is under a lot of pressure, that is not primarily because of Covid infections. It is because of pent-up demand that was suppressed by Covid; particular challenges in getting people out of hospital and into social care, partly because of elements of the social care workforce; and difficulties in accessing primary care with the Covid restrictions in place. If the pattern is similar in Scotland, the vaccination passport scheme will make a very small contribution to solving that problem. If you think that it is safe enough to keep the venues open, you need to ask yourself how much safer introducing passports makes the situation and whether the extra degree of safety justifies the fact that the burden of that safety will fall on a smaller group of the Scottish population—that is, people who do not have access to certification.

It would be wrong to see this as a golden bullet. Indeed, one of our concerns in the Ada Lovelace work is that people thought that vaccination passports were, somehow, the thing that would solve the problem, but they are likely to play only a small part in that.

John Mason: I want to touch on one other area. The Scottish Human Rights Commission and Ada Lovelace submissions raise questions with regard to permitting the use of certificates. The plan is to insist on them for nightclubs, football and concerts, but some employers such as care homes are looking at insisting that employees have a vaccination certificate. Can the Government do anything about that, or is it entirely up to employers, venue operators or indeed anyone? For example, if a shop wants to insist on someone having a certificate, is that just up to the shop? Can we do something about it? The question is for Ms Robertson.

Judith Robertson: Another danger of putting in place an infrastructure that supports certification is that the infrastructure could be abused. Having made the decision, the Government has an obligation to ensure that there is a framework for private non-state actors to use the infrastructure, because there could be far more impacts on people's rights. That issue needs to be looked at and well understood, because the implications of bringing in such infrastructure could be far reaching.

At the moment, the Government's proposals are relatively limited, which is positive, but it has talked about expanding the use of the scheme, so the issue applies to not only non-state actors but the Government. If the scheme is introduced without a legislative basis, that could create problems that we will have to deal with after the fact.

Alex Rowley (Mid Scotland and Fife) (Lab): Good morning. I will ask the question in a different way. Does the Government have a responsibility to do its best to protect the majority of people who have been vaccinated?

Professor Montgomery: The Government has an obligation to protect every citizen and resident in Scotland. I go back to what we said earlier about the importance of understanding how it is thought that vaccination passports will contribute to that process. If the issue is about incentivising people to get vaccinated, the argument has to be that the whole community is better off with high vaccination coverage and that it is not just a matter of individuals choosing whether to be vaccinated—people should get vaccinated not just because it is in their own interests, but because they are a member of a community.

I worry that vaccination passports undermine the arguments that are likely to persuade people to get vaccinated. Such arguments usually relate to safety, whether someone's faith community supports the use of vaccination, issues around solidarity and what a person's peers are doing. Each of those arguments can be addressed, but it might backfire if we roll them up into one argument with the Government saying, "You must have this in order to access an event", because that will just push such questions away for a short period.

In my experience of working in the NHS in Oxfordshire, working with faith communities and giving faith leaders access to the materials that they need to advise their members is pretty effective in increasing vaccination rates. Vaccination rates in older age groups in Scotland are very high across the board. I worry that vaccination passports would undermine the case for improving solidarity and, therefore, undermine protection for the whole community.

We need to understand what contribution vaccination certification will make. It might reduce the risk of a person getting infected in a particular case, but those who are vaccinated have protected themselves against serious illness. It is primarily about preventing spread through the community, so the people whom we are protecting are the vulnerable—people who have chosen not to be vaccinated, those who are not eligible for vaccination and those who are particularly vulnerable, even if they have been vaccinated, because of background conditions. I am not sure that vaccination certification will help to protect people who are vaccinated, and there needs to be an assessment of whether it will protect every individual in the community.

09:45

Rob Gowans: The Government has an obligation to protect people, but it also has to comply with equalities and human rights standards, so it is a question of balancing it up against those. It comes back to what the evidence tells us about the relative risks of people attending live events and nightclubs, and balancing that with the potential issues that have been highlighted around vulnerable groups.

It is important that the issues around vaccine hesitancy are recognised and considered with sensitivity and compassion. Some people are not vaccinated as a result of a protected characteristic. They may be medically unable to get vaccinated or have one of a range of other reasons. Voluntary Health Scotland has produced an excellent report that covers the various issues that affect people with different protected characteristics and the reasons why they may be more likely to experience vaccine hesitancy than other groups. For example, people who experience severe mental illness are less likely to get vaccinated.

There are a range of issues to be considered, but it is down to the clarity of evidence around the scheme.

Judith Robertson: I do not have much to add. The Government's obligation is to protect all citizens in a way that respects their rights, and particularly those who are most vulnerable to the impact of a measure that the Government takes against something that it is seeking to mitigate—in this instance, Covid-19.

Vaccination take-up rates are lowest among the most vulnerable. My understanding of that policy area is that it should be strongly built on engagement with those communities. We need to reach out to them to understand what hesitancy is based on, as Rob Gowans said. We need to work with community leaders on how it can be mitigated and alleviated, and resources should be put into that. I am not saying that we should not use the scheme, but those measures, which may be in place, should be considered and resourced. I have heard Jason Leitch talk many times about engaging with faith leaders and so on to encourage people who are vaccine hesitant.

The question from a human rights perspective is whether we have the evidence base to ensure that the measures, which impact on people's rights, are justified. That is allowed, but they have to meet certain criteria. The evidence base has to meet the tests of necessity and proportionality and they have to be non-discriminatory. We are looking for evidence that the measures can be justified, that the evidence base is solid and that the balance of harms that the Government has consistently and responsibly talked about throughout the process is laid out for people to understand.

The other issue that I would raise—although my purview is to answer questions—relates to the fact that the process up to now has been about encouraging people to get vaccinated and recognising that that is an effective means of supporting people to make the choice to get vaccinated. A certification scheme has much more of a feeling of coercion—it walks into that territory. It is not clear to me why the Government has shifted away from its publicly declared stance on encouragement towards something that has a different feeling to it. To me, that would be part of the proportionality and necessity test, and laying that out and understanding that is really important.

Alex Rowley: The Government has not produced clear evidence to suggest that it will be able to achieve its main objective here, which seems to be to increase take-up of the vaccine. A report that the Scottish Human Rights Commission produced a few weeks ago and sent to us highlights the areas that concern people from lower socioeconomic backgrounds and other specific groups. I am not sure that the evidence is there to show that. That said, I note that what is proposed is fairly limited compared with what I see in other countries around the world.

I suppose that one issue is whether there is a danger that we simply accept the measure and start to roll it out further. On the question of human rights, Murdo Fraser talked about people being ideologically opposed to the measures, but I have found that a growing amount of misinformation is being put out by anti-vaxxers, particularly through social media. Do you agree that the Government needs to tackle that?

Secondly, I saw a poll in *The Courier* this week that showed that two thirds of people believe that those who work in the care sector should be sacked if they do not get the vaccine. I have found anecdotally from speaking to people and asking them about vaccination passports that they raise questions about human rights. They will say, "What about my human rights? I have been vaccinated—do I not have a right to go to big venues and feel that there is some kind of protection in place?"

Do the rights of those who ideologically oppose vaccination and believe that it is all a conspiracy theory outstrip those of the majority of people, who have been vaccinated? That is the question that people raise, I find. What do you think about that, Judith?

Judith Robertson: That analysis around the balance of rights is in play here. People's economic rights, their right to cultural life, their

right to private and family life, their right to privacy in relation to health data and their right not to be discriminated against when engaging with cultural events in the community are all aspects of people's rights. What we are talking about here is the unpacking, the exploring and the articulation of that, and the test is whether we have looked at all of that and taken it into account in the process.

I am not seeking to give a definitive answer one way or the other; I am just seeking to help explore the matter and increase understanding of the obligations that exist on Government under a human rights-based approach. The Government must consider certain areas, put its consideration in the public domain and, potentially, stand by it so that there are answers to some of the questions in relation to people's different views on the matter.

Alex Rowley: My next question is for Professor Montgomery. The Parliament has voted for the scheme to go ahead and it seems that it will. It is limited, as I said, but it will have a major impact on the businesses that are involved, and it will have a cost.

Given that there has been a lack of evidence when the case has been made for the scheme and that it is, I think, to be reviewed every three weeks, what evidence should the committee look for in reviewing the scheme so that we take a view on whether it should continue and perhaps be rolled out further, or cease?

Professor Montgomery: That is absolutely the right question to ask at this stage. First, you need to ask for evidence on whether the introduction of the passport system has had an identifiable impact on transmission of the virus in the relevant areas. Secondly, you should ask about displacement. Given that the scheme will apply in defined areas, have people moved out of them and into alternative events? If so, how has that changed spread of the virus? Thirdly, given our concern that vulnerable groups in society will find themselves excluded from social, cultural and economic activities that they want to take part in, is there any evidence that that has happened?

Looking into those things will tell you whether vaccination passports have made a discernible difference as the economy reopens and, if so, what the differences are. If you discover that there appears to be no reduction in transmission, that will suggest that the impacts on the people who are excluded are not justifiable. If, on the other hand, you discover that there is a noticeable reduction in transmission and those who are excluded have alternatives whereby they can express themselves, you will perhaps say that the measure is a proportionate response while it is needed as part of a gradual reopening of everything to everybody.

Those are the types of data that I would ask for if I was in your position.

Brian Whittle (South Scotland) (Con): I will start by reiterating the concern that there has been a lack of meaningful consultation prior to the decision to implement the scheme. Witnesses have also talked about the case having yet to be demonstrated in the public domain. My concern, of course, is that the evidence does not actually exist.

Looking through some of the papers, I note that one of the biggest disparities in vaccination uptake relates to ethnicity, and that there is significantly less uptake among the black, Asian and minority ethnic community than there is among majority of our population. Do you think that that has been taken into consideration? Will the vaccination passport tackle the concern about ethnicity? My view is that the Government's plan to increase vaccination uptake will likely incentivise only those who frequent the likes of nightclubs and football stadiums, and that it will continue to drive that inequality in our society. I ask Professor Montgomery to start on that.

Professor Montgomery: The public engagement work that the Ada Lovelace Institute carried out identified trust as a key element in the use of such things as Covid passports and in Government initiatives in general. My worry is that vaccination passports do not really address the reasons why people are hesitant.

Some people might not want to get vaccinated because of reasons that relate specifically to the vaccines. They might be unconvinced about safety or taken in by some of the anti-vax rhetoric. Some people come from communities that are worried about the origins of the vaccine and about the research, and others have concerns about particular elements that faith leaders can address.

There is an understandable distrust among those communities who feel that they are neglected by society and who experience more heavy-handed policing and greater surveillance. If we move to a passport system, we may be reinforcing their sense of not being respected or having their needs taken seriously.

In the areas of the NHS in England in which I work, there has been a delay in people from BAME communities getting vaccinated. Although we felt that they should be encouraged to get vaccinated early because they are more vulnerable, they wanted more reassurance that the vaccine is safe. That was the case among our staff in the hospital. They did not want to be in the first wave of vaccination, because they were a bit more cautious about what was said to them, but they were happy to be vaccinated later on.

10:00

The worry is that instead of addressing the reasons for distrust and concern, vaccination passports aim to up the stakes, with people being told that if they want to enter certain venues, they must be vaccinated. That might exacerbate distrust and come back to haunt us.

You made the point that it is likely that the people whom we are worried about will not go the venues that are being suggested for requiring a passport. That might be because their communities do not attend events in such venues, or it might be because they do not have the finances to attend them. It would be a displacement of attention if vaccination passports were thought to be the solution to vaccination hesitancy. Alongside the passport initiative, there should be other ways of focusing attention on enabling people to take up the opportunity to protect themselves by getting vaccinated.

Judith Robertson: There needs to be a comprehensive evidence-based programme to understand vaccination hesitancy and its impact on different groups in which take-up rates are low. We need to understand the issue at stake and whether it is vaccination hesitancy. There could be language barriers and all sorts of other barriers to people engaging with vaccination.

We need to look at the issue in the round. We know that increasing uptake is one of the reasons why the certification scheme is being introduced, so we need to see a comprehensive analysis of the groups in which uptake is low, the reasons for that and the additional measures that are being put in place to ensure that those groups are reached. I am not saying that some measures are not being undertaken, but laying out the measures fully would assist us in seeing whether the certification scheme is having an impact in increasing uptake in certain areas, as Professor Montgomery outlined.

I want to go back to the point about a review. Initially, we understood that the process would be subject to review by the Scottish Parliament every three weeks. However, there has since been a change, with reference now being made to ministerial review every three weeks. We want that issue to be clarified to ensure that reviews are done transparently and publicly, so that we test the necessity and proportionality of the measures, as we have discussed. If there has been a move to ministerial review, we would welcome that change being reversed so that reviews are done by the Scottish Parliament.

Rob Gowans: The other witnesses have covered a lot of the points that I would have made. The scheme needs to be part of a basket of measures. We need to provide clear information in different languages and formats for some groups. We need to provide reassurance on the potential side effects of vaccination and to provide assertive outreach through community leaders whom people trust.

We would like clarity on the aims and the scope of the scheme. There has been discussion about the ambitions of the scheme as a public health measure to encourage more people to get vaccinated, but such measures need to be proportionate with regard to what the aims are and, indeed, the evidence of the effectiveness of the approach in targeting particular groups. There are a number of such areas where we need greater clarity.

Brian Whittle: In a similar vein, the Scottish Government has told us that, in essence, vaccination passports are being introduced to drive people's behaviour towards getting vaccinated. However, the hospitality sector has indicated an inequality in that respect. It is concerned that if venues offer similar services but have a different designation, the public will be driven away from places that require a vaccination passport and towards those that do not.

I will ask Mr Gowans to comment on that first, given that he was last to respond to my previous question.

Rob Gowans: Your question raises a number of issues. Last week, the committee heard from the Scottish Licensed Trade Association in quite a lot of detail on some of the measures, but for us, it comes down to the evidence. This is another area where co-production would have been helpful in allowing us to understand how the scheme is likely to affect people's behaviour. Are people more likely to get the vaccine in order to access nightclubs and other venues, or will they go elsewhere? Again, we would welcome more clarity and evidence on the matter.

Judith Robertson: I agree with Rob Gowans's point about the evidence base, and I think that it harks back to Professor Montgomery's point about whether the scheme will displace activity from places where it applies to places where it does not and whether such displacement will in and of itself increase harm or will actually make very little difference. Will it turn out that it is not certification itself that makes the difference but the other behaviours that are enabled or allowed in those spaces? That level of detail would have to be assessed, considered and put into the frame along with all the other analysis, measures and tests that the Government is carrying out to decide which venues the scheme will apply to. Only by putting that test explicitly in place and then measuring against it will you be able to have a decent evidence base for making decisions.

Professor Montgomery: The displacement of people from specified areas and events into others might have a public health benefit if the evidence clearly shows that nightclubs, some seated indoor events and so on are riskier places. After all, you would like people to live their lives in less risky places.

My only other comment is that if we are trying to incentivise vaccination take-up, we need to ask ourselves how we can reduce the barriers to vaccination to as low a level as possible. If we have an opportunity here, because people who are in groups with lower vaccination rates want to go to places that require vaccination passports, the obvious question to ask ourselves is whether, alongside the introduction of the certification requirement, we can make it really easy for people to get vaccinated. Pop-up vaccination clinics at places that young people go to might be the key to overcoming hesitancy, because the issue might be to do with it being difficult for them to access vaccinations if they cannot travel. If we say, "You cannot get tickets or come in here until you are vaccinated, but why do you not get the vaccination now?", we might have an impact.

It is all about understanding why it is thought that certification will have an impact on people's thinking around vaccine hesitancy. It would be really helpful to understand more clearly the rationale for introducing passports for those sort of venues at this point, and how it will overcome hesitancy.

Brian Whittle: I have one brief final question. The Ada Lovelace submission suggests that the Scottish Government has a responsibility to

"protect against errors, harm and discrimination".

We all recognise that the introduction of new technology needs a lead time ahead of going live to protect against those issues and against data breaches. There is a distinct lack of time and preparation here. Should that concern us?

I put that question to Professor Montgomery, as it relates to his submission.

Professor Montgomery: It is definitely a question that should be in the committee's mind. You should separate out those elements of data security risk that are particular to vaccination passports and those that have already been addressed in relation to other issues. This is not coming out of nowhere, with no similar app-based approaches; for example, we have contact tracing apps and ways of accessing health records. It is therefore not a standing start.

The committee should ask whether vaccination certification is taking place in a way that protects privacy. It should not give away too much information about individuals other than what is necessary for the proof of vaccination, and the QR code approach is designed to reveal as little as possible about people. The committee should be concerned and should seek to be reassured that appropriate security—such as deleting data after its purpose is finished and all those sorts of standard data protection approaches—is in place.

It would be wrong to say that this is suddenly creating a set of issues that are not already known about. Checking that the scheme has the same security protocols and protections that are in place for other schemes should be an element of its oversight.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): When the idea of introducing a vaccination passport was proposed, it slightly concerned me. However, we all accept that coronavirus kills people and that we cannot really know with any certainty how the virus will change or what other variants there will be. We also accept that the vaccine has had a huge impact in relation to helping us to control the virus, which has enabled us to have the current freedoms. That is my starting point. I am pretty sure that everyone on the committee would agree that that is what we should be considering, given that there is a world pandemic.

Earlier, Alex Rowley touched on an issue about care homes. I will go to the extreme end of how we deal with the situation: we either shut down society, or we go to the next extreme end. There is a care home company based in England—I cannot remember its name—which, I think, has a care home in my constituency. It is sacking people who have not agreed to get vaccinated on the basis that they cannot be guaranteed to protect the people whom they are employed to protect. The care home is balancing the human rights of the person who does not want to be vaccinated against the rights of the person who requires to be protected. How do the witnesses feel about that situation?

10:15

Professor Montgomery: That is a slightly different issue from the vaccination passport issue. It is a very live issue south of the border, where we are looking at mandatory vaccination for care home staff and consulting on making it mandatory for front-line NHS staff.

Earlier in the pandemic, we were hopeful that a person's vaccination status would reflect not only their vulnerability to the disease but their risk of catching it and passing it on to others. We now know that, with the delta variant, if you are vaccinated, your risk of catching the disease is roughly half what it would have been if you were not vaccinated. We also know that, once you catch

it, you are just as much of a risk in passing it on to others as you would be if you were not vaccinated. I believe that that is the up-to-date information, but if you need to check that, you probably need an epidemiologist or immunologist to pick up that question.

In that context, a mandatory vaccination process would make us less safe than we thought that it might. The key points about vaccination are that it keeps you safe from serious disease and that it keeps the system protected from being overwhelmed, because, if people do not get as ill with Covid, there is much less pressure on the health system. The worry about mandatory vaccination of care home staff is that, if the workforce chooses to leave rather than to get vaccinated, that might lead to a situation in which we are unable to look after the recipients of care in that system. Some—but by no means all—providers in England are saying that that is the impact of mandatory vaccination.

I return to the point that we made early in the discussion about understanding the rationale for hesitancy. If people have not been vaccinated because it is difficult to access vaccinations—they cannot take enough time off work to attend clinics because of their work patterns, for example—the answer is to give them the opportunity to be vaccinated at work. If the issues are concerns about safety, it makes sense to try to address those concerns head on. If the issues are more ideological and about the idea that, irrespective of safety or otherwise, you have the right not to be vaccinated, it is very reasonable for us, as a society, to say that people have that right but that they do not have the right to exercise it in a way that puts other people at risk. We would say to those people that they can work elsewhere—they do not have to work in the care system—but that, if they want to work in the care system, they must take steps to protect the people whom they are looking after.

There is a strong case for requiring people to take care of the vulnerable people for whom they are responsible. I am doubtful that vaccination passports and mandatory vaccination really address those concerns, and I am hopeful that we can address them more directly by looking at exactly why people are hesitant. However, that is a matter of judgment, and it would be reasonable to see the balance of judgment falling on the other side.

Judith Robertson: It is clearly a live issue in a context in which care homes are fundamental to supporting the whole health system with regard to Covid and everything else that is going on. It is also a live issue in the context of our withdrawal from the EU, because of staffing difficulties in care homes. I would go back to first principles when looking at the balance of people's rights in the process. Professor Montgomery has done an excellent job of laying out some of the considerations in that process. I reiterate my earlier points about engaging with those individuals for whom the take-up rates are low in the care home setting, with providers, which are part of the dynamic, and with the people on the receiving end of care.

There are a lot of stakeholders whose views and rights are at stake in that discussion and, rather than opting for a mandatory vaccination process, if we were to undertake a balanced analysis of all those rights and have a dialogue with those stakeholders in different ways, that could lead to very different outcomes, for many of the reasons that Professor Montgomery has outlined. There might also be many other reasons to engage with all the stakeholders in that discussion.

The fundamental basis of a rights-based approach is to undertake an analysis of what is at stake and then look at the evidence to see what supports what. Decisions about rights have already been made in different settings. I suspect that, because of the balance of rights and the sensitivity of the issue, some of those decisions will be tested in the courts, so we will see some of that play out.

The Scottish Government does not have power over employment rights, but it could look at providing a framework for decision making for employers, by unpacking the rights that are potentially at stake, providing the space to have test conversations with the stakeholders in a human rights-respecting way and seeing what measures can be put in place to increase take-up and ensure that people's rights are respected and balanced.

A lot could be done before an ultimate decision is made to mandate vaccination. As I said, it is about going back to first principles in relation to the Government's obligations to take a rights-based approach to the balancing and testing of people's rights.

Rob Gowans: We welcome the proposal that vaccination passports would be used only in specific settings, which do not include key public services, and we also note that people who work in the venues where a vaccination passport would be required will be exempt from the scheme.

There are issues when it comes to employment, because vaccination is optional but complying with the law on discrimination at work is mandatory. If people are sacked because they are not vaccinated, or employers require people to be double vaccinated as part of their condition of employment, that gives rise to potential discrimination, particularly if someone has a long-

term condition or is disabled, because that has the effect of increasing the disability employment gap.

Currently, as far as I am aware, the latest Advisory, Conciliation and Arbitration Service guidelines advise employers to support their staff to have the vaccine but not to insist on it, because it might give rise to discrimination claims, if people do not take the vaccine for reasons that are related to a protected characteristic, such as disability, sex, religion or belief. We would be concerned about any expansion to the scheme to cover people's employment, if it means that employers require staff to be vaccinated.

Jim Fairlie: My reason for asking that was to do with proportionality in relation to balancing the rights of the individual against the rights of the community. The care home is a microcosm of our approach. We accept that we are giving people a choice. We say that people can work in a care home but that they must do certain things to protect those who live or work there. As Jonathan Montgomery said, we can make it a condition that they have to be double vaccinated.

In the process of deciding whether we will have Covid vaccination passports, we are also giving a choice. As someone who believes in independence, I do not necessarily agree that we should take our lessons from elsewhere—we should be free thinking ourselves—but Covid vaccination passports are being introduced throughout the world. People have the choice to go to a nightclub or to football. Those are social events. Is it proportionate to say that, because we know that football matches and nightclubs are places where the virus spreads, if people choose to go there, they have an obligation for the greater good of society to try to mitigate the effects of the disease? Do you agree with that principle?

Professor Montgomery: That is a reasonable way to approach the matter. It depends on whether the range of choices that are available to people is broadly consistent with the lives that they want to lead. At the Ada Lovelace Institute, we are clear that you would need a strong justification to use vaccination passports in elements of everyday life such as shopping and going to work. If you identify a small group of events to which people have alternatives that they can choose, it is reasonable to expect them to take precautions when they go to those events to keep other members of the audience safe.

That does not undermine the point that we began with, which is that we need to understand why those categories are thought to be a particular risk; nor does it undermine the concern that introducing vaccination passports might be counter-productive because that might make people think that they do not need to take other precautions.

Answering your question is not identical to answering the question about vaccination passports. We should expect people to respect others' rights and freedoms and take some responsibility for their impact on them, but it is not clear to me that recognising that principle leads to the proposal that we have been talking about. Understanding why it is thought that it does is key.

Jim Fairlie: We are not saying that we will use vaccination passports in isolation to try to suppress the virus. The messaging is still the same: we are still asking people to wear masks indoors and take all the necessary hygiene precautions. We are still doing everything else that we are currently doing. Vaccination passports are an add-on that are targeted at a specific area where we want there to be a greater uptake of vaccines and to ensure that we suppress the virus's ability to spread. You said that we reduce transmission by 50 per cent if people get the vaccine. The policy is another layer of our ability to suppress the virus. Do you accept that?

Professor Montgomery: That depends on what the behavioural science tells us. If we have only vaccinated people—their chance of catching the virus is reduced by 50 per cent—at an event but they stop wearing their face masks, abandon social distancing and are less cautious, the net effect might not be the one that we are after. That is why it is important to understand the evidence.

When I talk to people about vaccination passports, the general perception is that they are a message that, if someone has been vaccinated, it is safe for them to do certain things. However, that is not the case with the delta variant—a person who is vaccinated is safer than they were, but they are not entirely safe.

10:30

That brings us back to the question of how much safer vaccination passports will make events. If the majority of people who go to them have been vaccinated, excluding the 10 or 15 per cent of people who have not been might not make a big impact on people's overall safety. That is what we need to know and what we should monitor, and it is, I think, what a review process should be able to pick up.

However, that argument is completely separate from the incentivisation argument, where the question is whether people, faced with that choice, will take up the vaccine. The French evidence suggests that introducing passports into a much broader area of social life than is proposed in Scotland has increased uptake, but it should be said that the French started from a much lower base. As a result, it is unclear whether such a

move would have a proportionate impact on Scotland.

Those are all the questions that need to be examined. However, without any articulation of the evidence, it is not obvious to me why we are being led to take that step at this stage. I am not saying that the evidence does not show that—I am just saying that it is not yet clear.

The Convener: I am sorry, Mr Fairlie—we had been doing well for time, but now we have run out of it. I will bring in Alex Cole-Hamilton for some brief questions.

Alex Cole-Hamilton: I will be very brief, convener, and I am grateful to you for letting me in.

In the interests of time, I will ask a couple of yes or no questions. Professor Montgomery, you referred in your opening remarks to a festival in Cornwall called, I think, Boardmasters, that required vaccination passports for entry. Nevertheless, 5,000 people still got sick. Was there a requirement to provide evidence of a negative lateral flow test at that festival, too?

Professor Montgomery: Yes. I understand that a vaccination passport and a negative test result were required.

Alex Cole-Hamilton: Okay. That was very helpful. So, even though everyone knew that everyone else was double-jabbed and people were presenting their lateral flow test results, 5,000 people still got sick. It just shows that this is not a foolproof approach.

Judith Robertson, you made it very clear—indeed, I wrote it down—that states and Governments can set aside their duty to act compatibly with rights such as the right to family life, privacy and freedom of thought only if it were necessary to address a pressing social need. What if the Government does not act compatibly with those rights and does not present any evidence that such a move is necessary to address a social need? Is there a sanction that would apply?

Judith Robertson: That is a good question. There is no immediate sanction. I suspect that, if there were any sanction at all, that would ultimately happen in the courts. If someone decided to take the Government to court with regard to the scheme's introduction and the Government was unable to establish such aspects, that could be brought to bear in a discussion in court about the scheme's efficacy and compliance with human rights, and a decision would be made thereon. As I have said, there is no immediate sanction—other than, I guess, this conversation and any other dialogue with the Government in relation to its obligations—but there could be a final court judgment in which the measure was deemed an infringement of the right to, say, family or cultural life. The Government would have to uphold that judgment.

Alex Cole-Hamilton: From what you have said today, you do not seem to be satisfied that—as yet—you have seen sufficient evidence from the Government that the measure is necessary to address a very pressing social need. In fact, we have seen from the festival in Cornwall evidence to the contrary that it does not actually do so. What evidence would satisfy the requirement to set aside those very important human rights?

Judith Robertson: We would like to see the evidence on which the Government is basing its decision. It will have that evidence; at least, I trust it that it has made its decision on the basis of evidence, and that is what we would like to see. What is the evidence base? The Government might be using evidence that absolutely justifies its decision but it is not currently in the public domain. Professor Montgomery has outlined many areas in that respect, and we would like to see that evidence.

Alex Cole-Hamilton: This is obviously a very controversial issue; indeed, the Night Time Industries Association has just mounted a legal challenge against the proposal. If the Government were to be found sitting on compelling empirical evidence that suggests that the measure is an effective means of addressing this very pressing social need, would that surprise you? After all, if I was in Government and had that evidence, I would rush it out and put it to the fore.

Judith Robertson: We are concerned that that evidence has not been made available publicly; indeed, we expressed that concern to the cabinet secretary yesterday. We believe that there is a commitment to taking a rights-based approach, and we very much see the need for the evidence base to be shared publicly so that the measure can be fully interrogated. In fact, we see it almost as a test case in how people's rights are considered in what is a controversial issue.

Proportionality has already been attached to the measure. After all, this is not a blanket use of certification; it is being applied to only a very limited area of public life. Key considerations have been made along the way in adapting the scheme and potentially making it more rights respecting, but it is almost certainly the case that more could be done. The crucial thing is the multiple forms of engagement with people who will potentially be directly affected, and that seems to be missing. If it is not missing, we want to see the result of those dialogues, those conversations and that meaningful participation of people in developing the scheme. There is further work to do on that matter.

Alex Cole-Hamilton: Thank you very much.

The Convener: We are running late, so I will simply thank all the witnesses for their time and the evidence that they have given this morning. If you wish to give any further evidence to the committee, please do so in writing. The clerks will be happy to liaise with you on that.

I suspend the meeting for a changeover of witnesses. Members should be advised that the comfort break before the next evidence session will be only a very short one.

10:36

Meeting suspended.

10:41

On resuming—

Ministerial Statement and Subordinate Legislation

The Convener: We will now take evidence on the latest ministerial statement on Covid-19 and subordinate legislation. I welcome the Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson; the national clinical director, Professor Jason Leitch; Angus Macleod, who is deputy director of the Scottish Government's community surveillance division; and Graham Fisher, who is deputy director of the Scottish Government's legal directorate. I thank them for their attendance. We will consider the following regulations.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 17) Regulations 2021 (SSI 2021/301)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 18) Regulations 2021 (SSI 2021/307)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 19) Regulations 2021 (SSI 2021/319)

The Convener: Cabinet secretary, would you like to make some opening remarks before we move to questions?

The Cabinet Secretary for Net Zero, Energy and Transport (Michael Matheson): Good morning. I will briefly address in order the instruments that the committee will consider today.

The Scottish international travel regulations had provided that, following arrival in Scotland, day 2 and day 8 Covid-19 tests must be carried out by public providers—that is, by the NHS in Scotland. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 17) Regulations 2021 allow those tests to also be supplied by private sector test providers, provided that they are on the United Kingdom Government's published list of test providers. To get on to the list, providers must self-declare compliance with relevant regulations and Department of Health and Social Care guidance. All providers must work towards and complete full United Kingdom Accreditation Service accreditation. The DHSC removes from the list those who fail to follow the necessary stages of accreditation, those who fail to achieve the

required turnaround times for test results, those who are not clear in their pricing, and those who act unethically.

The regulations also provide for a small but significant number of seasonal agricultural workers who are unable to isolate on a named farm due to insufficient accommodation. They allow them to isolate to the same standards as any other amber list arrival in off-farm accommodation organised by their employers.

The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 18) Regulations 2021 relate to the 26th UN climate change conference of the parties—COP26. I am sure that members are aware that COP26 will bring together countries to accelerate action towards the goals of the Paris agreement and the United Nations Framework Convention on Climate Change, in order to address climate change at an international level. COP26 and the world leaders summit are being held in person because of the complex nature of the negotiations and the need for secure discussions. That requires exemptions to travel restrictions.

The amendments provide for arrangements for and exemptions from self-isolation, managed quarantine, day 2 and day 8 testing requirements and completion of the passenger locator form for persons attending or facilitating COP26 and the COP26 world leaders summit. Exemptions vary for different categories of attendees. More limited exemptions apply for those attending or facilitating COP26 who have not been invited to attend both COP26 and the world leaders summit by the UK Government or who are not granted privileges and immunities in connection with COP26.

10:45

Those who have been in a country or a territory that is on the amber list in the 10 days before their arrival in Scotland will not be required to self-isolate. Fully vaccinated persons who have been in a red list country or territory in the 10 days before their arrival in Scotland will be required to undertake five days of managed quarantine rather than 10 days. If they are not vaccinated, they must quarantine for 10 days.

For delegates who must stay in managed isolation, the definition of “authorised vaccine” for these purposes is extended to include any vaccine that has been authorised for use in the country in which it was administered. There is no exemption to the pre-arrival testing requirement to possess a negative result from a qualifying test.

In order for the exemptions for COP26 and the world leaders summit to apply, individuals will be required to provide written confirmation that they will comply with the United Nations Framework Convention on Climate Change code of conduct, which sets out rigorous measures for the events. The code will mitigate the additional public health risks arising from holding in-person events in the UK and the exemptions to travel restrictions.

The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 19) Regulations 2021 provide for an exemption from the requirement to enter managed self-isolation for participation in European professional football club fixtures in Scotland. They were made urgently because of players arriving in Glasgow from red list countries for a fixture taking place on Thursday 16 September. There was a risk that home fixtures would be moved abroad to a neutral venue to allow European club players who had played internationals in red list countries in the previous 10 days to participate. That would have caused significant disruption to Scottish clubs and home fans and generated a far higher risk of Covid transmission than the very small number of players travelling to Scotland.

I hope that that is a helpful overview of the regulations that the committee is considering. I would, of course, be happy to respond to any questions that committee members may have.

The Convener: Thank you, cabinet secretary.

I am conscious that we have only 35 minutes for this session. Questions and answers should therefore be restricted to around four to five minutes each, please.

I will ask the first question. The recently updated Scottish Government travel advice, including the removal of the amber and green traffic light system, seems like great news for Scottish people who have been fully vaccinated and are hoping to go abroad on holiday. However, as I have been reminded by one of my constituents, a remaining challenge is that Scottish people who work abroad and are fully vaccinated are able to return to Scotland for a holiday to see their families only if they have been vaccinated in one of a limited number of countries—those in the European Union, the US and a small handful of other countries. Scots who live and work outside the US, the EU and the small group of other countries and are looking to see and reconnect with their families are not currently considered as vaccinated under the new guidelines, even if they are fully vaccinated with the Pfizer or AstraZeneca vaccine. The issue seems to be where they were vaccinated, not what vaccine they were vaccinated with.

Are you aware of those challenges? When do you expect the list of qualifying countries to be expanded so that fully vaccinated Scots can return home for a holiday without a 10-day quarantine?

Michael Matheson: Last week, some changes were made that extend the number of countries that will qualify for the vaccination programme and for people's entry into Scotland and the UK. I am aware that there are issues relating to vaccines that are provided in other countries for which there are travel restrictions. However, I suspect that Professor Jason Leitch is better placed to give members a more detailed clinical understanding of why that is the case and what action is being taken to address the issue.

Professor Jason Leitch (Scottish Government): Seventeen countries were added to the vaccine list. The UK as a whole recognises the vaccinations given in those countries. However, there are two problems: the type of the vaccine and the certification of the vaccine. Does the country provide a piece of paper, an app or an electronic version that can be checked? For example, Zimbabwe gives no evidence of vaccination. It may well vaccinate its citizens, but the citizens have no evidence of vaccination. That is a challenge.

UK-wide, we added to the list 17 new countries, including a host of areas from around the world. Those countries are now recognised. That list will be kept under review, and ministers will get advice on when new countries should be added.

Murdo Fraser: I want to ask about polymerase chain reaction tests for international travellers.

I welcome the regulations that open up private sector test providers for travellers, because a number of constituents have raised complaints with me about the cost of doing the PCR test through the one previously designated provider. However, there is an outstanding issue of which you will be aware. The UK Government has announced its intention to remove the requirement for international travellers who have been double jabbed to have a PCR test when travelling. On Tuesday, the First Minister indicated that the Scottish Government was considering what steps it would take in that respect.

The travel industry has been vocal on that matter, as I am sure you are aware. It is concerned that Scottish residents who are looking to book last-minute travel for the October break will now look to fly from an English airport because they will then avoid the requirement for a PCR test, and that that will be to the detriment of the Scottish travel industry and Scottish airports. Every day that goes by potentially costs the Scottish travel industry because people are making those bookings right now. When will we get a decision from the Scottish Government on that issue?

Michael Matheson: There are two aspects to that. The first relates to the UK Government's intention to remove the requirement for pre-departure testing and the second relates to the requirement for day 2 PCR testing. It is important to understand and recognise the importance of both those tests.

The pre-departure test is intended to certify that a traveller is not positive when they get into an aircraft and that they do not have the potential to infect other people on that aircraft. It is an important element in trying to reduce the risk of infecting other individuals. I understand that contact tracing becomes complex when infection takes place in an aircraft.

The PCR testing at day 2 is an important element in our surveillance programme to identify potential variants of concern. If someone is infected, removing the requirement for a PCR test at day 2 potentially compromises significantly our ability to identify variants of concern that are coming into the country and to have them genome sequenced. If we simply go to a lateral flow test, we do not have the same ability to undertake the genomic sequencing as we have with a PCR test.

Given the UK Government's decision, we have sought further advice, as the First Minister said in her statement to the Parliament on Tuesday. Officials are still providing that advice, and I expect that the First Minister will set out our approach as early as possible—in the next day or so, I hope—in response to the further advice that we have received from clinicians. I will be open with the committee: the clinical advice is that PCR testing pre-departure and at day 2 should remain in place. It plays an important role.

Mr Fraser will be aware that not only the Scottish Government but other devolved nations have raised significant concerns about the approach that the UK Government is taking to the issue. However, we need to recognise the potential impact of continuing with the existing regime, given the UK Government's action, because people will simply choose to go to airports in England, and its impact on the aviation sector. We are taking those factors into account alongside the clinical advice on the value of pre-departure tests and day 2 PCR testing.

Murdo Fraser: Okay. Thank you, cabinet secretary.

Jim Fairlie: First, I will ask about the factors that you are considering in relation to COP26, which you briefly outlined. Were any lessons learned from the recent G7 summit, or were there any problems after it? Are some of the systems that you will put in place for COP26 similar to what happened with the G7 summit?

Michael Matheson: The G7 event was much smaller in scale than COP26, and it involved a much smaller number of individuals. Some

aspects of what we have agreed to put in place for COP26, such as the testing regime and restrictions, are there so that we can facilitate an in-person COP to take place—because we recognise the significance of the event—while trying to mitigate some of the risks. I would not say that we have drawn directly on the lessons from the G7, because it was very different in nature and scale, as COP26 is significantly larger. I assure you that we have tried to strike a balance in allowing COP26 to take place in person while mitigating the risks that are associated with such a large number of people coming together over a relatively limited period.

Jim Fairlie: My second question is more constituency based. We still have constituents who are getting their first jag in England and their second jag in Scotland, but the connection has not yet been made, so they are struggling to get their vaccination certificate. Are we any closer to getting a solution to that?

Michael Matheson: I will hand you over to Professor Leitch, because he is looking at resolutions to that issue.

Professor Leitch: We have a solution, but there is a backlog of problems. People should phone the helpline, and the staff will fix their problem, but they will not fix it instantly. Because there are identification numbers from both countries, it can be quite complex. We have solutions, but there are a lot of cases, so the helpline staff, including those who are providing the tech solutions, are working their way through them. We have fixed a lot of those cases but, if some remain, people can use a form on NHS Inform or call the helpline and the staff will get to it as quickly as they can.

Jim Fairlie: Excellent—my constituents will be delighted.

Brian Whittle: I will follow on from Mr Fairlie's questions on COP26. One of the things that we learned from the European championships was that a balance has to be struck between risk and benefit. We recognise that bringing together people from different countries will significantly increase infection rate, and COP26 will be an even more significant risk, given the number of countries that are involved. Will Mr Matheson comment on the evidence on that balance between safety and benefit? Is it the Government's intention to publish the evidence?

11:00

Michael Matheson: We have taken that forward through negotiations with the UK Government, the Scottish Government and the UN, to create a pathway for registered delegates to COP26 or the world leaders summit to attend in-person negotiations and meetings. From the regulations, you will be aware that those who are travelling from high-risk countries—which are classed as red-list countries—still have much more stringent restrictions. Those who are unvaccinated will have to go into managed quarantine for 10 days, just as any other individual would have to, and then, as part of that, go through the normal testing regime on days 2 and 8. If those who have travelled from or have been in a red-list country in the past 10 days are vaccinated, they will be able to reduce their managed quarantine period to five days but will be required to have PCR tests over that period.

For those travelling from non-red-list countries, there is still a requirement for pre-departure testing, the completion of a passenger locator form, and day 2 testing, as well as daily lateral flow tests as part of the code of practice that has been put in place by the UN to try to minimise risk. The two Governments and the UN have tried to collaborate on finding a mechanism that manages the high-risk elements as best we can through managed quarantine and testing while also managing the broader risk through pre-departure, day 2 and daily lateral flow testing for delegates attending COP26.

Moreover, those arrangements are restricted to registered COP26 delegates. If you are not a registered delegate or if you have not been invited by the UK Government to attend the conference, the measures will not apply. Where things have been relaxed, it is only for registered delegates or invited participants. We have to try and strike a balance.

It is difficult for me to easily give you information on the balance of risks; all I can say is that we are trying to manage the whole thing in a planned way that helps minimise those risks. We know that, for example, vaccination, regular testing, early identification of positive cases and managed quarantine help to reduce risk, and we have put in place a range of measures to mitigate the risk of people having the virus while reducing the potential importation of the virus.

Brian Whittle: I have a quick follow-up question. A key element of COP26 will be the fringe events, at which delegates might interact with those who are not delegates and therefore might not have gone through that stringent testing procedure. What consideration has the Government given to putting in place safety protocols in that respect?

Michael Matheson: Members should keep in mind that, aside from the testing arrangements that we are putting in place for COP26 delegates, the overlying system of restrictions in Scotland—appropriate social distancing, the wearing of masks, good hand hygiene and so on—will

continue to apply to any venue holding a fringe event. The numbers of people in venues will be limited in view of the need to maintain social distancing. It is important to recognise that the present layer of restrictions will also apply to COP26 fringe events, and venues that would normally hold larger numbers of people will not be able to do so and will need to manage numbers in a way that supports social distancing, mask wearing and so on.

The Convener: As members have no further questions, we move to item 6, which is consideration of the motions on the made affirmative instruments.

I propose that the motions on the agenda be moved en bloc. Are members content?

Members *indicated agreement.*

Motions moved,

That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 17) Regulations 2021 (SSI 2021/301) be approved.

That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 18) Regulations 2021 (SSI 2021/307) be approved.

That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 19) Regulations 2021 (SSI 2021/319) be approved.—[*Michael Matheson*]

Motions agreed to.

The Convener: The committee will in due course publish a report to the Parliament setting out our decision on the statutory instruments considered at this meeting.

That concludes our consideration of this agenda item and our time with the cabinet secretary, and I thank him and his supporting officials for their attendance this morning. The committee's next meeting will be on 30 September, when we will take evidence on vaccination certification. We will also hear from the Deputy First Minister and Cabinet Secretary for Covid Recovery on the ministerial statement on Covid-19 and subordinate legislation.

That concludes the public part of the meeting.

11:06

Meeting continued in private until 11:20.

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