

COVID-19 Recovery Committee

9th Meeting, 2021 (Session 6), Thursday 4
November 2021

Ministerial statement on COVID-19; the Coronavirus Acts: Two-Monthly Reports to the Scottish Parliament; Covid Recovery Strategy; and Subordinate legislation

Introduction

1. At this meeting, the Deputy First Minister and Cabinet Secretary for COVID Recovery (“the Cabinet Secretary”), will give evidence under agenda item 2.

2. The Committee will take evidence under this agenda item on:

- the policy announcements arising from the latest Ministerial statement on COVID-19, which is due to take place on 2 November 2021;
- [the Coronavirus Acts: Ninth Two-Monthly Report to Scottish Parliament](#), published on 13 October 2021;
- [the Coronavirus \(Scotland\) \(No.2\) Act 2020: Eighth report on the Scottish Ministers' responses to requests for information under the Freedom of Information \(Scotland\) Act 2002](#), published on 8 October 2021; and
- the [Covid Recovery Strategy: for a fairer future](#), published on 5 October 2021.

3. The Committee will also take evidence on the following subordinate legislation under agenda item 2, before it considers the corresponding motions, under agenda item 3—

- the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329);
- the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349).

Background

4. For more background information on the statutory powers being used by the Scottish Government to respond to COVID-19 and the Scottish Government's strategy for dealing with COVID-19 and COVID-19 recovery, see the [SPICe Blog](#).

Agenda item 2: Ministerial statement on COVID-19; the Coronavirus Acts: Two-Monthly Reports to the Scottish Parliament; Covid Recovery Strategy; and Subordinate legislation

Ministerial statement on COVID-19: Tuesday, 2 November 2021

5. On 2 November 2021, the First Minister will set out the Scottish Government's most recent actions for responding to COVID-19 in a statement to the Chamber. Members will take evidence on any policy announcements arising from this statement under agenda item 2.

SPICe COVID-19 Update

6. SPICe produces a briefing entitled 'SPICe COVID-19 Update' (see **Paper 3**). This provides Members with links to the latest guidance and supporting information published by the Scottish Government, in addition to a selection of websites with information on wider health and social and economic indicators in Scotland.

Two-Monthly Reports to the Scottish Parliament

7. As required by section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland) (No.2) Act 2020 Act, this latest two-monthly report ('The Ninth Two-Monthly Report to the Scottish Parliament') sets out the status and operation of the legislation necessary to respond to the COVID-19 pandemic. It was published on 13 October 2021 and covers the period from 1 August 2021 to 30 September 2021. The report can be accessed on the [Scottish Government's website](#). An extract from this report relating to the operation of provisions made using the health protection powers in schedule 19 of the Coronavirus Act 2020 is attached at **Annexe A**.

8. The Coronavirus (Scotland) (No.2) Act 2020 provides that Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to requests for information under FOISA. The eighth Freedom of Information Report was published on 8 October 2021 and covers the period from 27 July 2021 to 26 September 2021. The report can be accessed on the [Scottish Government's website](#).

Covid Recovery Strategy

9. On 5 October 2021, the Scottish Government published the [Covid Recovery Strategy: for a fairer future](#), which sets out the Scottish Government’s vision for recovery and the actions it will take “to address systemic inequalities made worse by Covid, make progress towards a wellbeing economy, and accelerate inclusive person-centred public services”.

Subordinate legislation

Overview

10. All the subordinate legislation listed on the agenda is subject to the ‘made affirmative’ procedure. This means that the regulations can come into force immediately and without any parliamentary scrutiny. The regulations can only remain in force for 28 days from the date they were made into law. To continue in force for longer than 28 days, parliamentary approval is required and must be granted within the first 28 days of the instrument being made. The DPLR Committee and COVID-19 Recovery Committee will report on each of the instruments, before the whole Parliament considers motions to approve them.

Policy Background: (SSI 2021/329)

11. On 22 September 2021, the Scottish Government laid [SSI 2021/329](#) and it came into force on 29 September 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 8 November 2021 to remain in force beyond this date.

12. According to the [policy note](#), the purpose of the instrument is as follows—

“These Regulations extend the expiry date of The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (“the principal regulations”) to 25 March 2022.”

13. The policy note to the principal regulations (SSI 2020/262) that are extended by SSI 2021/329 can be accessed on the [legislation.gov.uk website](#).

14. The Ninth Two-Monthly Report to the Scottish Parliament details the operation of these and other provisions made using the health protection powers in schedule 19 of the Coronavirus Act 2020 within the reporting period 1 August 2021 to 30 September 2021 (see paras. 7.3.5.1 – 7.3.5.29). The report provides an overview of the factors considered to determine their use and continued necessity (see pp. 108 – 109), which is provided in Annexe A.

15. The policy note to SSI 2021/329 states that impact assessments are not required for these regulations. A [Business and Regulatory Impact Assessment](#) was provided with the principal regulations (SSI 2020/262).

16. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 2021/329 at its meeting on 28 September 2021 and had [no points to raise](#).

Policy Background: (SSI 2021/349)

Pre-legislative scrutiny

17. These regulations give effect to the vaccination certification scheme. Prior to SSI 2021/349 being laid, the Committee took evidence on the vaccine certification scheme proposals from stakeholders at its meetings on 16, 23 and 30 September 2021. Background information and links to these sessions can be found on the Committee's [website](#).

18. Following these evidence sessions, the Committee [wrote](#) to the Scottish Government on 30 September 2021 highlighting a number of issues which should be addressed during the scheme's implementation. The Committee received a response from the Scottish Government on [28 October 2021](#) which is attached at **Annexe B**.

19. On 30 September 2021, the Scottish Government laid [SSI 2021/349](#) and it came into force on 1 October 2021. As the regulations are subject to the made affirmative procedure, they must receive parliamentary approval by 12 November 2021 to remain in force beyond this date.

20. According to the [policy note](#), the purpose of the instrument is as follows—

“In line with our strategic intent to ‘suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future’, the policy objectives of Covid Vaccine Certification are to:

- Reduce the risk of transmission of Coronavirus
- Reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service
- Allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- Increase vaccine uptake

These Regulations implement the COVID-19 vaccine certification scheme (“the scheme”). These Regulations require late night premises and premises where a relevant event is taking place to operate a system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or to demonstrate that they are exempt from that requirement.

The winter period ahead will pose the significant risk of increased transmission and related pressure on the National Health Service. These Regulations should be considered alongside the latest State of the Epidemic Report. In light of these risks, urgent action is needed across all sectors to ensure compliance with a range of baseline COVID-19

mitigations. Vaccine certification is a further targeted and proportionate measure that is urgently needed to reduce further the risk posed by coronavirus and in doing so alleviate future pressure on the National Health Service.

Vaccine certification is one of a range of actions that the Government is taking to deliver its strategic intent and policy objectives. There are continuing statutory requirements to wear face coverings in certain settings, subject to exemptions, to collect contact details in hospitality and entertainment venues and to have regard to guidance on minimising exposure to coronavirus. Other key measures include the vaccination programme, now being expanded to 12-15 year-olds and to provide “booster” vaccinations, the ongoing promotion of adherence to the statutory measures, including through engagement with relevant stakeholders and the maintenance of international travel restrictions.

The scheme is being implemented in a targeted and proportionate manner related to higher risk activity. A broader scheme (such as expanding the scheme to apply to all hospitality) would deliver a greater public health benefit. However, the Government’s assessment is that, at this time, a broader application of the scheme would be disproportionate. This will be kept under review. The range of actions that can be taken to reduce risk in these higher risk settings is limited. Scottish Government considers certification to be less intrusive and restrictive than other options, such as mandatory physical distancing, mandatory face coverings, absolute capacity limits, closure or restricted opening hours. This will be kept under review.”

21. The policy note also states—

“The diverse feedback received has informed the development of the scheme and the [Equality Impact Assessment](#), [Child Rights and Wellbeing Impact Assessment](#) and [Business and Regulatory Impact Assessment](#) that are published alongside these Regulations. A Data and Privacy Impact Assessment (“DPIA”) has been prepared for the implementation of the scheme, including these Regulations. Officials have consulted with the Information Commissioner’s Office who have agreed a single DPIA is sufficient. The DPIA is being finalised and will be published as soon as possible.”

22. The DPLR Committee considered SSI 2021/349 at its meeting on 5 October 2021. It had the following points to raise in its report published on [8 October 2021](#)—

“This instrument makes amendments to the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (“the Principal Regulations”) in order to introduce the requirement for certain premises to ensure that persons entering their premises are either fully vaccinated or exempt.

The instrument:

- requires that premises have a reasonable system for checking that persons seeking to enter the premises are either fully vaccinated or exempt;
- requires that persons who receive such information in the course of operating a system keep that information confidential;
- requires that premises required to have such a system also prepare and maintain a compliance plan;
- provides that a person responsible for premises who alters the course of their business in order to prevent the new requirements from applying to them does not commit a licensing offence; and
- provides that a local authority may designate a person who may enter premises subject to the new requirements in order to prevent the continuation of an offence under the new requirements where they reasonably believe an offence is being committed.

This instrument was made at 11.39 am on 30 September 2021 and laid before the Parliament at 3.30 pm the same day. It is subject to the made affirmative procedure and came into force at 5.00am on 1 October 2021.

The requirement to implement a reasonable system for checking a person's vaccination status and the requirement to prepare and maintain a compliance plan will not be enforced until 5.00am on 18 October 2021.

While it was noted that no technical points had been raised on the SSI, the focus of the Committee's discussion was on whether the affirmative procedure (where a draft SSI is laid before the Parliament and is required to be approved before it can come into force) would have been the more appropriate choice of procedure for these Regulations. Instead, the made affirmative procedure had been used (where regulations can come into force immediately but are required to be approved by the parliament within 28 days in order to remain in force).

During the Committee's consideration of the SSI, each Member in turn highlighted their views. Graham Simpson MSP noted that while it was not for the Committee to consider the policy of the instrument, it can nevertheless "decide whether the procedure that is being used is the correct one." Highlighting that the made affirmative procedure allowed the Regulations to be in force prior to any parliamentary scrutiny, Mr Simpson said that "Committees have looked at the policy in general terms but, until today, no committee has managed to discuss it while having the regulations in front of it—and they are already in force."

Mr Simpson added: For me, the question is whether that was the right procedure. The First Minister announced weeks ago that she and the Scottish Government wanted to bring in a vaccination passport scheme. The regulations came into force last Friday, but the Government has said that it will not enforce them for another two weeks. Given all that, I argue very strongly that that gives the Parliament time to properly scrutinise the regulations and therefore that the made affirmative procedure that the Government has used—which avoids scrutiny—is the wrong procedure.

The Government should have put the regulations through under the affirmative procedure.

Craig Hoy MSP echoed Mr Simpson's concerns that the use of the made affirmative procedure was the wrong approach. Mr Hoy said that he believed the made affirmative procedure was being used "not because of urgency but because of political expediency" and that the Committee is "the arbiter and gatekeeper in respect of that and it is right that we do that."

Similar concerns regarding the level of parliamentary oversight were shared by Paul Sweeney MSP, noting in particular that: In light of constituency representations that I have received regarding international compatibility, as well as the value for money of the technical solution that ministers decided upon, I say that the policy merited greater debate in the Parliament, regardless of whether we support the principle of vaccination passports. Therefore, I agree that the regulations would be better suited to the affirmative procedure than the made affirmative procedure.

Bill Kidd MSP also noted that the affirmative procedure should have been used in this instance. Mr Kidd said that while the nature of the current coronavirus situation has meant that "things have moved on apace", because of that "the regulations have potentially skipped some of the oversight that is required in the Parliament."

The Convener, Stuart McMillan MSP, said: Notwithstanding the points that colleagues have made about whether the made affirmative procedure or the affirmative procedure should have been used, no technical points have been raised on the regulations that are in front of us and on which we have to vote. As no technical points have been raised, I will vote for them.

Mr McMillan also proposed that the Committee write to the Scottish Government to ask about the use of the made affirmative procedure as well as highlighting concerns that have been raised by Members.

In light of the above, the Committee disagreed (by division: For 2 (Bill Kidd MSP and Stuart McMillan MSP), Against 3 (Craig Hoy MSP, Graham Simpson MSP and Paul Sweeney MSP) and Abstentions 0) that it was content with the instrument.

The Committee agreed to highlight its views to the lead committee and to write to the Minister for Parliamentary Business to ask whether the Scottish Government might reflect on how it determines whether the made affirmative procedure is the appropriate procedure to be used in future."

Written submission

23. On 29 October 2021, the Equality and Human Rights Commission provided a written submission to the Committee on the regulations and this is attached at **Annexe C**.

Agenda item 3: Subordinate legislation

24. Under agenda item 3, the Cabinet Secretary will be invited to move motion—

- [Motion S6M-01399](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329) be approved.
- [Motion S6M-01529](#)— That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (SSI 2021/349) be approved.

Next steps

25. The Committee will publish a report setting out its consideration of the motions under agenda item 3 in due course.

**Committee Clerks
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temporary restrictions on early learning and childcare in 2021 was published on 19 February.⁶³

- 7.3.4.6 Ministers' powers to issue directions to educational establishments also include further and higher education institutions. To date, the powers have not been exercised in relation to FE or HE institutions. Nevertheless, it is considered appropriate for the powers to remain in force in full. It may become necessary in due course to issue educational continuity directions to those sectors, particularly as Covid related restrictions continue to ease and in person teaching resumes for the majority of students. Continuity directions would allow Ministers to require institutions to take appropriate health protection measures, possibly including partial closure of a further or higher institution where there is a significant outbreak. These powers would only be used as a last resort in the FE/HE sectors. The Scottish Government's position remains that it is working closely with universities, colleges and other organisations within the sector to mitigate any impacts on the further and higher education system arising from the pandemic while preventing the spread of the virus. The sector has voluntarily behaved responsibly, closing institutions when necessary, and complied with relevant non-statutory guidance and advice.
- 7.3.4.7 It is the case that Covid-19 related restrictions eased at the beginning of the reporting period and no education related directions are currently required. However, it is considered appropriate that these powers remain in force, as they are necessary to support actions in society to prevent the spread of the virus, and to ensure that educational provision is maintained for children and young people. Uncertainty as to the course of the pandemic remains and further educational continuity or closure directions may be necessary in future periods.

Section 49 and schedule 19 - Health Protection Regulations: Scotland

Description of Provision

- 7.3.5.1 Section 49 introduces schedule 19, which gives Scottish Ministers the powers to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination with coronavirus in Scotland.

Operation of Provision in Reporting Period

- 7.3.5.2 Section 49 and schedule 19 commenced on Royal Assent and came into force on 25 March 2020. The powers have been used to make several sets of regulations to provide for the "lockdown". While the full chronology of these

⁶³ [Coronavirus \(COVID-19\): re-opening childcare - impact assessment](#)

regulations up to 31 August 2021 (SSI 2021/263⁶⁴) can be viewed in the eighth two-monthly report to Parliament⁶⁵, the regulations made using these powers in this ninth reporting period are as follows:

- **5 August 2021:** [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Regulations 2021](#) (SSI 2021/277) were made. These Regulations provide that relevant hospitality and entertainment premises are required to obtain and record visitor information for the purpose of preventing the spread of coronavirus or monitoring the spread of infection and the incidence of coronavirus disease. They also require persons responsible for places of worship, carrying on a business or providing a service to have regard to relevant guidance issued by the Scottish Ministers about measures to minimise risk of exposure to coronavirus. They also provide that persons in specified indoor places must wear a face covering unless a specific exemption applies. They require persons who use a passenger transport service or passenger transport service premises to wear a face covering unless a specific exemption applies. They also cap numbers at live events at 5000 people for events held outdoors and at 2000 people for events held indoors subject to local authority approval of higher attendance limits in accordance with the process set out in the regulations. Enforcement powers are provided for. They also require Scottish Ministers to review the requirements at least once every 21 days and the regulations require Scottish Ministers to revoke any requirement as soon as it is no longer necessary.
- **2 September 2021:** [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment Regulations 2021](#) (SSI 2021/299) were made. These Regulations enable performers to perform or rehearse for a performance without face coverings in situations where distancing or partitioning is not possible. The exemption will apply as long as there is either a partition or a distance of at least one metre between performers and other people (including the audience) but that does not include people who are performing or rehearsing with the performers or assisting with the performance or rehearsal.
- **22 September 2021:** [The Health Protection \(Coronavirus, Restrictions\) \(Directions by Local Authorities\) \(Scotland\) Amendment Regulations 2021](#) (SSI 2021/329) were made. These Extend the expiry date of The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (“the principal regulations”) to 25 March 2022.
- **29 September 2021:** [The Health Protection \(Coronavirus\) \(Requirements\) \(Scotland\) Amendment \(No. 2\) Regulations 2021](#) (SSI/349) were made. These regulations provide that late night premises and premises where a relevant event is taking place must operate a reasonable system for checking that persons on, or seeking to enter, their premises are fully vaccinated against coronavirus or are exempt from the requirement to demonstrate that

⁶⁴ [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 32\) Amendment Regulations 2021](#)

⁶⁵ [Coronavirus Acts: Eighth Report to Scottish Parliament](#)

they are fully vaccinated. Relevant premises must also prepare a compliance plan describing how their systems will operate and other measures in place to prevent or minimise the spread of coronavirus. These Regulations amend the Principal Regulations to enable a local authority to take appropriate steps to enforce the requirement to operate a vaccine checking system. These Regulations introduce a right of entry for persons designated by a local authority to enter premises operating a system. These Regulations also remove capacity limits previously in the Principal Regulations on stadia and live events above which a capacity exemption application must be approved by a local authority.

- 7.3.5.3 Associated guidance has been regularly updated. Evidence supporting the decisions applying the Strategic Framework levels across different parts of Scotland each week since they were first introduced on 2 November 2020 is set out in the series [Covid Protection Levels; Reviews and Evidence](#). This includes a series of [State of the Epidemic](#) reports which summarise the latest indicators on case numbers and testing, as well as evidence on prevalence of the new variant of concern (VOC).
- 7.3.5.4 On 11 December 2020 the Scottish Government published [Assessing the Four Harms of the Crisis](#). This document describes how the Four Harms approach works in practice and presents evidence to illustrate its application to decisions relevant to Scotland's Strategic Framework.
- 7.3.5.5 Revised [Local Protection Levels](#) were published on 13 April 2021. These were subject to ongoing review as necessary. Scotland has subsequently moved beyond Level 0.
- 7.3.5.6 On 22 June 2021 the Scottish Government published an updated version of COVID-19 Scotland's Strategic Framework which describes how we will prioritise moving out of lockdown, as well as a review of physical distancing in Scotland.
- 7.3.5.7 In addition, the [Modelling the Epidemic](#) series provides outputs from modelling of the spread and level of the epidemic by Scottish Government, as well as results by modelling groups feeding into the SAGE consensus. These help ensure a robust, peer-tested and up to date picture informs decisions.
- 7.3.5.8 Public Health Scotland ("PHS") also publish a [Covid19 weekly statistical report](#). This presents key information on the rollout of the vaccine, volumes of tests and data on Covid transmissions, prevalence of the new variant and case numbers, plus links to a range of research resources and tools.
- 7.3.5.9 Police Scotland is publishing weekly updates on the use of coronavirus legislation, including the number of Fixed Penalty Notices issued and other intervention activity⁶⁶. This information is drawn from Police Scotland's 'Coronavirus Interventions' application, which relies on manual input from police officers. Due to this manual input, these figures are indicative only and

⁶⁶ [Police Scotland: Enforcement and Response Data](#)

should not be considered Official Police Statistics. This system currently provides the broadest picture of the differing levels of co-operation experienced by police across Scotland.

- 7.3.5.10 In due course and as standard practice, the Official Statistics produced by the Scottish Government on Recorded Crime⁶⁷ and Criminal Proceedings⁶⁸ will ultimately provide users with information on both the number of crimes recorded in relation to the new powers, and the number of Fixed Penalty Notices issued. The Recorded Crime in Scotland, 2019-20 publication included a small number of crimes recorded under the legislation which was introduced towards the end of the reporting, in March 2020⁶⁷. Further updates on developments with these Official Statistics can be received by signing up to the SCOTSTAT network⁶⁹.
- 7.3.5.11 Information is now available on charges reported to COPFS under the various Health Protection Regulations made under schedule 19. Most charges were related to regulation 5(1), for failure to comply with the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020.
- 7.3.5.12 Table Three below provides additional information on the number of charges reported up to 31 August 2021 and the initial decision on how these charges will proceed.

Table Three: Action taken as a result of charges reported to COPFS under the various Health Protection Regulations – up to 30 June 2021

Action taken	Number of charges reported	% of total
Solemn	102	5%
Summary	755	34%
Fiscal Fine	576	
Combined	1	
Fixed Penalty	9	
Diversion	93	
Reporter	60	
Warning	121	
Work Offer	3	
Direct Measure Total	863	38%
No Action/Not Separately Actioned Total	417	19%
No Decision Total	112	5%
Grand Total	2249	100%

Source: COPFS

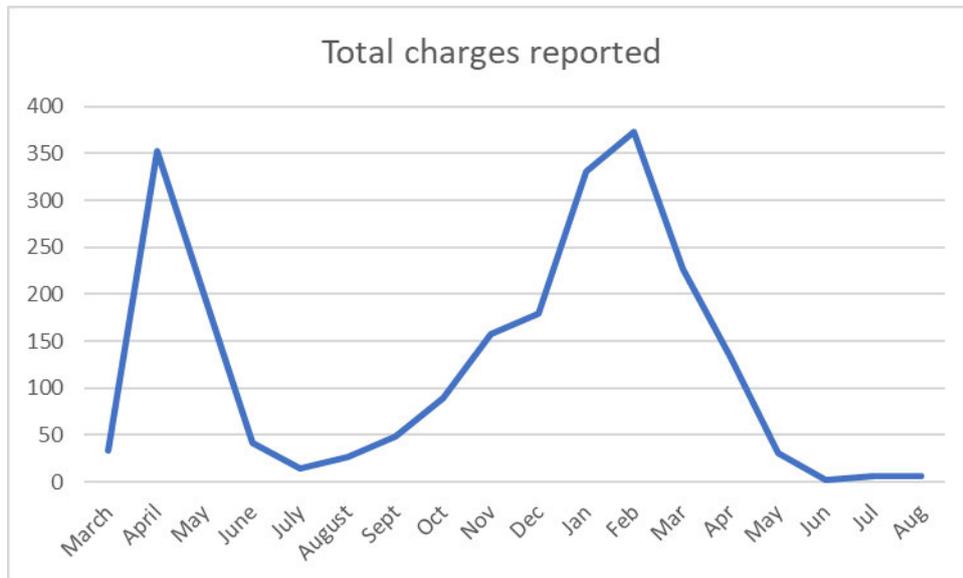
⁶⁷ [Recorded Crime in Scotland: 2019-2020](#)

⁶⁸ [Criminal proceedings in Scotland: 2019-2020](#)

⁶⁹ [ScotStat: Subscribe to our Alerts and Newsletters](#)

7.3.5.13 The table above covers the full period of the regulations being in force. A monthly breakdown of charges reported by date of offence is provided below.

Table Four: Charges reported to COPFS under the various Health Protection Regulations by date of offence – up to 31 August 2021



Source: COPFS

7.3.5.14 A total of 14 charges were reported to COPFS for offences committed between June and August 2021, with the number of charges now fewer than ten per month after the decline from peak levels seen in January and February 2021. April 2020 and February 2021 are the months in which the highest number of offences took place. Please note that the number of offences in recent months may increase as further reports are received.

7.3.5.15 A Local Authority can also use enforcement powers in relation to the parts of the regulations that relate to restrictions on businesses.

7.3.5.16 To ensure a co-ordinated approach to coronavirus was taken nationally, the Environmental Health/Trading Standards COVID-19 Expert Group was formed by the Society of Chief Officers of Environmental Health of Scotland and the Society of Chief Officers of Trading Standards in Scotland in conjunction with COSLA. Both Environmental Health and Trading Standards staff have been designated as authorised officers by Local Authorities to enforce the relevant requirements of the various Health Protection Regulations, made under schedule 19 of the UK Act.

7.3.5.17 Each Local Authority is publishing information about enforcement activity undertaken in relation to the regulations on the respective Local Authority's website. This information is currently published every two weeks.

Factors Considered to Determine Use and Continued Necessity

- 7.3.5.18 COVID-19: Scotland's Strategic Framework set out how the Scottish Government was working to suppress the virus and outlined the move to a strategic approach to outbreak management based on five levels of protection. The levels include graduated packages of measures designed to reduce transmission of the virus based on clinical advice and research. These levels could be applied nationally or to different areas of the country according to the evolving patterns of infection and transmission; higher levels indicated more stringent restrictions in response to higher infection rates.
- 7.3.5.19 The levels were designed with reference to Scotland's Framework for Decision Making and the Four Harms caused by the virus – in order to achieve the targeted impact on harm 1 at each level. They also seek to mitigate as much as possible the impact on harms 2-4.
- 7.3.5.20 Decisions about which levels to apply in which area were taken on the basis of public health and clinical advice, and an assessment against the four harms. These decisions require judgement to be applied to all the facts and considerations relevant at the time they are made.
- 7.3.5.21 The Strategic Framework was clear that decisions allocating levels to areas have to be based firmly in the best available evidence and information. They are assessed through a process that is open, transparent and collaborative so that restrictions are not kept in place longer than is strictly necessary to achieve the aim of suppressing the virus.
- 7.3.5.22 The process for moving between the levels took in clinical advice from the National Incident Management Team and Scottish Government clinical leads – around the Harm 1 direct health impacts from COVID. Directors of Public Health monitor data on a daily and weekly basis and SG officials update the suite of indicators weekly. The National Incident Management Team considers this information alongside local data and analysis in providing public health advice.
- 7.3.5.23 This is brought together with evidence and the assessment of impact on the other Harms caused by the virus – including the indirect health harms, the social harms and harms to the economy. A range of indicators, along with other evidence, was used to build up a picture of the Four Harms impacts of changes to levels. Wider considerations were also be taken into account such as the prevalence of infection elsewhere, or of the characteristics of new variants – which might suggest differential impacts.
- 7.3.5.24 Changes to level allocation, whether up or down, needed to be justified by the data, supported by public health advice and consistent with the Framework for Decision Making. Decisions were made by Ministers, in exercise of their statutory powers in relation to public health, and implemented through regulations.

- 7.3.5.25 Local authority partners were engaged in the decision making process through the National Incident Management Team and were consulted ahead of decisions applying levels being taken.
- 7.3.5.26 The Regulations must be reviewed at least every 21 days to ensure that the measures they impose continue to be necessary and proportionate.
- 7.3.5.27 In between these formal reviews, the individual measures are kept under continuous review and changes are assessed through the Four Harms approach. Changes arising from the reviews are set out to the Scottish Parliament in plenary and then considered by the Parliament's COVID-19 Committee.
- 7.3.5.28 Throughout the development of the regulations and guidance, the Scottish Government has always had regard to the need to protect human rights, equality considerations, the impact on business and the particular needs of island communities as part of the policy development process.
- 7.3.5.29 Ministers are clear that the restrictions and requirements imposed by regulations must be necessary and proportionate. Whilst measures across the levels aim to deal with a significant threat to public health, impact assessments have been, and will continue to be, carried out as required on these measures. Any proposed changes will be assessed for their impact on equality and other areas as part of the policy development. This will be reported to the Scottish Parliament in appropriate impact assessments supporting any further amending regulations. All impact assessments can be found on www.legislation.gov.uk under the appropriate instrument.

Section 51 and Part 3 of schedule 21 - Powers relating to potentially infectious persons

Description of Provision

- 7.3.6.1 Section 51 introduces schedule 21 which sets out powers which can be exercised by public health officers, constables and immigration officers in respect of persons where there are reasonable grounds to suspect that they are “potentially infectious”.

Operation of Provision in Reporting Period

- 7.3.6.2 A declaration of a serious and imminent threat to public health⁷⁰ was made on 25 March 2020 under schedule 21, and a further clarificatory declaration⁷¹ was made on 30 March 2020. Although the schedule 21 powers have been “switched on” via this declaration made by Scottish Ministers, they have not been used in the reporting period. The views and agreement of the Chief Medical Officer were formally sought and secured prior to the issuing of the

⁷⁰ [Coronavirus \(COVID-19\): Declaration of a serious and imminent threat to public health](#)

⁷¹ [Coronavirus \(COVID-19\): Declaration of a serious and imminent threat to public health \(supplementary\)](#)



The Scottish Parliament
Pàrlamaid na h-Alba

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By e-mail

30th September 2021

Dear John,

VACCINATION CERTIFICATION SCHEME

I refer to the Scottish Government's proposals for a vaccination certification scheme ('the scheme'), as set out in the First Minister's statement to parliament on 1st September 2021 and subsequent policy papers.

As you will be aware, the COVID-19 Recovery Committee ('the Committee') will play a lead role in scrutinising the implementation of the scheme, which is due to commence on 1st October 2021. The Committee has therefore taken evidence from stakeholders and Scottish Ministers to understand the purpose and likely impacts of this policy. The Committee has agreed to write to the Scottish Government to highlight the following issues, which we consider should be addressed during the scheme's implementation.

Monitoring implementation

The Scottish Human Rights Commission highlighted to the Committee the importance of publishing the evidence base that informs the government's policy decisions. The proposed policy provides that Scottish Ministers will review the ongoing necessity of the vaccination certification scheme every three weeks. The Committee therefore requests that the Scottish Government lay a paper in SPICe setting out the evidence base that has been used to inform Scottish Ministers' decisions about the scheme's continued necessity, as part of the three-week review process.

The Committee also took evidence from the Ada Lovelace Institute, which has investigated the implementation of vaccination certification schemes in other countries. The Ada Lovelace Institute noted the importance of being clear about the scheme's intended purpose and desired outcomes. The Committee has considered a list of

possible indicators that would assist parliament in understanding the scope and impact of the proposed scheme, which is attached in the Annexe to this letter. The Committee requests that the government measure and report on the impact of the scheme against the indicators highlighted in the Annexe at each three-week review point.

Public communication and engagement

The Committee took evidence from experts in public behaviour who emphasised that it is essential to maintain the public's trust and confidence in the Scottish Government's response to COVID-19. The Committee therefore considers that a proactive public information and community engagement strategy should accompany the implementation of the scheme. This should enable the public to understand the purpose of the scheme and how to use it.

The Committee would welcome more detail specifically on how the Scottish Government proposes to use an inclusive communication approach, including how it intends to reach those audiences which the Scottish Government consider will face additional barriers in using the scheme, or demonstrate a lower than average uptake in vaccination. The Committee requests the Scottish Government reports on public communication activities at each review point, including how it measures the impact of these activities.

Winter plan, timing and consultation

The Committee also took evidence from stakeholders who will play a role in implementing the scheme, including the Scottish Football Association (on behalf of the Joint Response Group) and the Scottish Licensed Trade Association. These stakeholders highlighted the importance of giving businesses and organisations as much time as possible to prepare for new public health measures before they are introduced.

The Committee is aware that the winter period may pose significant challenges and that further public health measures may be required to alleviate pressure on the NHS and other essential services. The Committee therefore considers that it would be helpful for the Scottish Government to set out a winter plan.

The purpose of this plan should be to highlight what measures will be introduced to tackle a worsening state of the epidemic should it arise, including whether there is any scope for the vaccination certification scheme to be widened. This would enable businesses to adequately prepare and may alleviate the impact of any further measures should they be required.

It would also be helpful for the Scottish Government to set out the factors that would determine when the scheme is no longer necessary. This would provide assurance that

the measures will be in place for no longer than necessary, notwithstanding any sunset provision embedded in the scheme.

The Committee would be grateful to receive your response to this letter and the information requested by 29th October 2021, so that it can be considered in time for your next committee appearance.

Siobhian Brown MSP
Convener
COVID-19 Recovery Committee

ANNEXE

Vaccination certification: indicators for the three-week review process

NB: The Committee requests details on the following indicators, as part of the three-weekly review process.

Impact on transmission and vaccination

- Evidence of impact of scheme on rates of transmission of the virus
- Rates of vaccination by age, sex, disability, race and SIMD area.

Economic and business impacts

- Turnover in the night-time economy, including any evidence of displacement in the activities directly affected by the scheme.
- Attendance levels at the following events, including comparative figures for pre-pandemic levels:
 - late night venues with music, alcohol and dancing
 - live events: indoors unseated 500+ in the audience
 - live events: outdoors unseated 4,000+ in the audience
 - all live events: 10,000+ in the audience
- Breakdown of attendance levels by people in the lower vaccinated groups (e.g. breakdown by age, gender, ethnicity, and geographic area of residence)

Human rights impacts

- Number of people who have downloaded the COVID status app and accessed their QR code; and number of people who have requested a paper copy.
- Breakdown of people using QR codes versus a paper copy by socio-economic profile, such as age, gender, ethnicity, geography.
- Number of people who have reported difficulties in accessing the COVID status app; their QR code; or paper copies.
- Number of people who have reported inaccuracies with the information contained in their vaccination record.

Letter from the Deputy First Minister and Cabinet Secretary for Covid Recovery to the Convener – 28 October 2021

Dear Siobhian,

I am writing in response to your letter of 30 September about Covid Vaccine Certification, in which you asked for further information on three specific topics.

Monitoring implementation

As you know, the Scottish Government published the [Covid Vaccine Certification Evidence Paper](#) on 29 September and I wrote to the Committee that morning to share an advance copy. This paper sets out the wide ranging and balanced evidence available in relation to Certification, and was used to inform our decision to proceed with the scheme.

The purpose of the scheme and outcomes are set out in the [Coronavirus \(COVID-19\): mandatory Vaccine Certification proposals](#) of the 9 September and the [Coronavirus \(COVID-19\): Vaccine Certification update](#) of the 23 September. The policy objectives of the scheme are four-fold:

- Reduce the risk of transmission of Coronavirus
- Reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service
- Allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- Increase vaccine uptake

Throughout the pandemic we have taken a rounded view of restrictions. In line with the Covid legislation we are required to review the regulations every three weeks, and they must only remain in place whilst they are necessary and proportionate. As the Committee will be aware, the last review was on 26 October and was reported to Parliament on that date. The next reviews are scheduled for 16 November and 7 December. We look at a range of data to determine whether the regulations continue to be required. This includes the current state of the pandemic, the trends, and anticipated pressures such as winter and potential surges in infection arising from, for example, COP26 and the forthcoming festive season. Certification will be considered as part of that review.

In addition, we are committed to monitoring the impact of the scheme across the aims, and have considered carefully your helpful proposals on indicators which could be used to assess the scheme as part of the three weekly review process. Unfortunately, due to data protection and GDPR legislation as well as the unavailability of some data, we are not able to provide all the information you have suggested for each indicator. The table at **Annex A** summarises the position with regard to the Committee's request.

Understanding the effects of the scheme, and how it is being implemented, requires data about the use of the technology, vaccinations, and the impact on society and the economy. However, it is challenging to isolate the effects of any one element of the Covid response. Some of this information about app use, vaccination and case trends is available through the PHS and Four Harms Dashboards, and formed the basis of the three-weekly review. We are

in the process of developing data and operational insight and intelligence that will help us to address your questions and will give you further information as this work evolves.

Public communication and engagement

As the Committee highlighted, a proactive public information and community engagement strategy which enables the public to understand the purpose of the scheme and how to use it, is required to accompany the implementation of Certification.

A national advertising campaign is running across radio and digital advertising formats to increase awareness of domestic Certification. This signposts to nhsinform.scot for more information and promotes downloading the NHS Scotland COVID Status app. Further communications activity has been delivered through Scottish Government social media accounts and media relations activity at key stages from the initial announcement on the introduction of domestic Certification.

The communications approach for domestic Certification at a community level was to go through the venues and events impacted. The Domestic Certification Stakeholder Toolkit has been circulated to the following groups: Local Authority Communications Teams; Health Boards; Economic Recovery Hub; DFM COVID Recovery Group; COVID Business Support and Strategic Engagement Team. This contains various assets which can be used by stakeholders to promote domestic Certification through their communication channels.

We are building on learning across other materials, such as the Covid-19 Vaccine Explainer animations, and are currently developing a Covid Certification Summary Information Sheet which will include key messages and guidance on how to access translated information about Covid Certification. This Information Sheet will signpost people to the information on NHS Inform for further detail.

This Summary Sheet takes into account conversations with minority ethnic and seldom heard audiences and will address their specific concerns, such as data collection, usage and privacy. The Summary Information Sheet will be created in multiple languages and accessible formats.

The impact of the marketing activity will be assessed through the Scottish Government campaign tracking. We also have access to information from digital advertising to identify the reach (how often the adverts have been delivered) and impact (how the percentage taking action relating to one of the campaign adverts compares to other Scottish Government campaigns and benchmarks used by our media buying agency).

Winter plan, timing and consultation

The COVID-19: Strategic Framework series provides an important overview and explanation of our management of the epidemic. The June update set out the approach for moving to the current position of a largely vaccinated population with a small number of residual baseline measures to keep the virus controlled. We plan to publish a further update of the Strategic Framework shortly, which will explain our approach to managing the pandemic over the late autumn/winter period.

Our expectation is that COVID-19 will become endemic and that we have a difficult winter to plan for. Factors such as vaccine uptake and vaccine waning, levels of compliance and the

risk of new variants can all combine in different ways to produce very different outcomes requiring different responses.

There are potential scenarios in which further targeted and proportionate interventions would again be required, on a temporary basis, to control the virus. We hope that these scenarios – such as a new variant of concern that is worse than, and replaces, the now dominant Delta variant – do not become the reality, but we need to be ready in case they do. We already have our system of protective levels of graduated restrictions, which would enable us to respond in a targeted and proportionate way, potentially tailored by geography, in response to epidemiological conditions. Alternatively, we might pursue specific measures on certain high-transmission risk settings that avoided the need for a more general levels approach and thereby alleviated broader harms. This could potentially include extending Certification to a wider range of settings. We will always take current and anticipated epidemiological conditions (across a range of measures) into consideration when determining the appropriate response, to ensure that it is necessary and proportionate.

It is worth reiterating that we are not wholly reliant on restrictions to control the virus, and we would continue to take action across multiple fronts to reduce the need to re-impose restrictions, as we are well aware of the broader harms that they cause. For example, increased adherence to the existing measures in place would tend to reduce the need for restrictions, and we would encourage all individuals and organisations to continue their efforts on this front.

We want people and organisations to be assured that we will be ready to respond effectively should the epidemiological conditions require that. However, the re-imposition of restrictions remains a contingency that we hope not to have to deploy. More specifically, in terms of how long Certification might be in place, under the legislation it can only remain in place where the evidence and clinical advice indicates that it remains proportionate and necessary. It is not possible to set those out definitively; as set out above it will depend on a combination of measures for example, case rates, pressure on the NHS, vaccination rates and impact on businesses. Suffice to say we do not want to keep the scheme for any longer than is necessary

I hope that the Committee finds this further information helpful.

Yours sincerely,

JOHN SWINNEY

Impact on transmission and vaccination	
Evidence of impact of scheme on rates of transmission of the virus	Information about positive case rates are published. As is the position with all restrictions, it is not possible to establish the individual impact of this scheme on changes in transmission of the virus.
Rates of vaccination by age, sex, disability, race and SIMD area.	Vaccination data is published by PHS and broken down by age/sex/ethnicity/SIMD. This is not available by disability.
Economic and business impacts	
Turnover in the night-time economy, including any evidence of displacement in the activities directly affected by the scheme.	Owing to Standard Industrial Classifications for statistics, industry data is not reported for the night time economy sector as a whole. However, business surveys report turnover in last 2 weeks for SIC code 56 (Food & Beverage Services) and this will be reported.
Attendance levels at the following events, including comparative figures for pre-pandemic levels: <ul style="list-style-type: none"> late night venues with music, alcohol and dancing live events: indoors unseated 500+ in the audience live events: outdoors unseated 4,000+ in the audience all live events: 10,000+ in the audience 	Data on attendance is not available on a comparable basis across the different types of event. However, information from business organisations will be used to build a picture of how attendance has been affected. This will be complemented by public attitudes data where possible.
Breakdown of attendance levels by people in the lower vaccinated groups (e.g. breakdown by age, gender, ethnicity, and geographic area of residence)	As above.

Equality and Human rights impacts	
Number of people who have downloaded the COVID status app and accessed their QR code; and number of people who have requested a paper copy.	We are working with PHS and NSS to publish this data as part of the PHS weekly COVID-19 statistical report.
Breakdown of people using QR codes versus a paper copy by socio-economic profile, such as age, gender, ethnicity, geography.	Data is not available. Headline data on the number of people who have used the app and the number of paper copies requested will be published in the PHS weekly COVID-19 statistical report. In line with the Data Protection Impact Assessment, the processing of personal data is used solely to link to vaccination history to provide COVID status, so no further breakdowns of the data are planned for publication.
Number of people who have reported difficulties in accessing the COVID status app; their QR code; or paper copies.	Data is not available. Users are able to report any difficulties by phoning the COVID Status Helpline.
Number of people who have reported inaccuracies with the information contained in their vaccination record.	Data is not currently available. Users are able to report any issues by phoning the COVID Status Helpline.

Submission from the Equality and Human Rights Commission – 29 October 2021

Summary

We have been engaging with the Scottish Government regarding the concept of Covid status certification in the abstract for some time. Our position throughout has been that Covid status certification may be a proportionate means of safely opening up society, but that such a scheme could risk having disproportionate impacts on certain groups which would need to be considered carefully and mitigated where appropriate.

We have now had the opportunity to consider the scheme introduced in Scotland. The Scottish Government has identified a number of ‘negative impacts’ in relation to possible discrimination in the scheme. Indirect discrimination can be objectively justified. However, we feel that certain elements of the scheme – the risk of scope creep; the use of facial recognition in the app; the lack of a test alternative; and the need for ongoing data collection to understand any disproportionate effects – merit further scrutiny.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is the national equality body for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected characteristics set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

The purpose of this paper

We have been engaging with the Scottish Government on the concept of a Covid-19 status certification scheme in the abstract, alongside the SHRC, since March this year. Having now had the opportunity to consider the specific scheme introduced by the Scottish Government, and given that the regulations have been introduced by the made affirmative procedure, we hope that it is useful to share our initial views with the Covid-19 Recovery Committee. This paper refers to the domestic scheme only, and not to international travel.

As the SHRC have been engaging on this issue and due to our shared mandate on human rights, this paper only addresses equality matters.

Our overarching position

We [responded to the UK Government Cabinet Office's consultation on Covid status certification](#) in April this year. Our response set out our view that, in principle, 'Covid status certification could be a proportionate means of safely opening up society'. However, it also noted:

'...concerns about potential for discrimination or for infringement of civil liberties in the use of certification status to travel, go to work, enjoy social activities and access essential services [...].'

Additionally, we noted the critical importance of any government proceeding with a certification scheme complying with the Public Sector Equality Duty (PSED)¹ at all stages of policy design, implementation and monitoring. This also applies to other public bodies involved with the scheme and those exercising a 'public function', which may include any relevant private contractors.

The Scottish scheme

Indirect discrimination

The scheme's [equality impact assessment](#) (EQIA) notes 'negative impacts' for several protected characteristics in relation to the first 'need' of the PSED (eliminating unlawful discrimination, harassment and victimisation). The Equality Act 2010 provides that indirect discrimination can be justified if the policy in question – in this case, the scheme – is a 'proportionate means of achieving a legitimate aim'. This is known as 'objective justification'.

In considering whether a policy is objectively justified, it is important to ask if the aim is legitimate, and whether the means of achieving the aim is proportionate. That is, is it appropriate and necessary in the circumstances, and the least discriminatory option available? What is proportionate may differ depending on the aim being pursued.

Having identified these 'negative impacts' – and, in most cases, considered and identified elements of the scheme that may mitigate such impacts – it is presumably the Scottish Government's position that any indirect discrimination arising from the scheme is objectively justified.

Nevertheless, we have identified a number of elements of the scheme we believe merit further scrutiny.

Scope creep

The scope of the Scottish scheme is relatively narrow, and does not apply to travel, work or essential services. This is welcome. However, while the scheme does not apply to 'key' settings, including workplaces, there is a risk – acknowledged in the EQIA – that the app is used by employers to ascertain vaccination status of employees.

We do not have sufficient evidence to be able to suggest if any sectors or types of employers may be more likely to take such an approach, and therefore whether

¹ See Annex A for a brief explanation of the PSED in Scotland.

scope creep is likely to have a disproportionate effect on any groups sharing particular protected characteristics. However, if employers in the settings to which the scheme applies – namely, some events and hospitality settings – were to extend the scheme to staff, there would likely be a particular effect on younger people who are disproportionately employed in relevant sectors.²

To prevent the scheme from being utilised outside of its intended scope, the Scottish Government should ensure that it is communicating adequately with employers on how, where and when the scheme applies and, crucially, where it does not. It may also be appropriate to provide a means for employees and unions to indicate when the scheme is being applied out of scope. This would enable the Scottish Government to gather evidence of the extent of any issue and any associated disproportionate effects, and potentially to communicate directly with employers on appropriate use of the scheme.

Facial recognition

As the EQIA explains:

‘The App will use biometric identification software at the set up stage. This means users will be asked to scan a photo of their ID – for example a passport or driving license – and then take a live photo or video of themselves. The software will then use their live photo to compare likeness with the photo in their ID and confirm their identity.’

For those who cannot use the app (or for whom the app does not work), a paper alternative is available, which can be requested by phoning the Covid-19 Status Helpline or via NHS Inform. It is important that this option is well publicised through accessible offline channels, with a particular focus on channels that reach people who are least likely to be able to access or use the app.

The EQIA acknowledges that the automatic verification process will not work for some people and that facial recognition software is associated with ‘racial and gender biases’. It is not clear to us why this verification process is necessary to use the app, as no such process is necessary when engaging with the helpline or NHS Inform. It does not seem that any additional information is required to offset the lack of facial recognition when not using the app; we are therefore unsure why a form of technology which is known to have disproportionate impacts on people sharing particular protected characteristics is required by the app. If the use of facial recognition in the app has an indirectly discriminatory effect and is not necessary to achieve the scheme’s aims, it is unlikely to be objectively justified.

Additionally, where the facial recognition software fails to automatically verify someone – estimated to affect around 1 in 20 people – there will be a manual intervention by staff of the private provider of the app. We consider this may amount

² See [Scotland’s labour market annual population survey 2020/2021](#), which shows that people aged 16-24 account for 33.5% of the workforce in ‘accommodation and food services’ and 16.7% of the workforce in ‘arts, entertainment and recreation’, despite forming 11.3% of all employment in Scotland.

to exercising a public function and therefore the provider must ensure its compliance with the public sector equality duty. It also engages data protection and privacy issues which are more appropriately addressed in this case by our colleagues at the SHRC.³

Test alternative

The Scottish scheme is unique in Europe in that it does not accept evidence of a negative test or of natural immunity (owing to prior infection) as an alternative to proof of vaccination. The rationale given for this is that to do so would undermine one of the policy aims of the scheme – to increase vaccine uptake – and reflects uncertainty regarding self-testing using lateral flow tests. The EQIA states that the possibility of offering a test alternative will be kept under review.

The evidence on the efficacy of vaccine certification schemes in the context of boosting vaccine uptake is mixed, as the [Scottish Government's evidence paper](#) acknowledges.

We consider that the choice not to offer a test alternative may have a disproportionate effect on those who have chosen not to be vaccinated for religious or belief reasons, including for example people from certain religious backgrounds or vegans concerned about any use of animal products or testing in the development of vaccinations.⁴

There is no individual religious or belief exemption to the scheme, which permits only exemptions for those who are medically unable to be vaccinated. However, we note that communal places of worship are exempted from the scheme.

Data collection

The [Committee's letter of 30 September to the Deputy First Minister](#) rightly notes the importance of monitoring the implementation and effects of the scheme. The scheme's EQIA also notes the need to monitor and evaluate the scheme in the context of the human rights tests of necessity and proportionality.

We would add that data collection is necessary from an equality perspective, not least to meet the requirements of the PSED. Data should be gathered to understand whether the scheme is having disproportionate effects on any groups sharing protected characteristics, which should in turn support ongoing assessment of equality impact. The data collected must therefore be disaggregated by protected characteristic to enable such consideration.

³ The SHRC, from which the Committee has heard oral evidence, [wrote to the Deputy First Minister regarding the scheme](#) on 22 September.

⁴ Examples of such use can be found in this [UKRI briefing on animal research in the Covid-19 response in the UK](#).

Annex A

The Public Sector Equality Duty

The Equality Act (EA) 2010 came into force in October 2010 and provides a single legal framework to tackle discrimination and disadvantage. The EA 2010 includes provisions intended to protect individuals from unfair treatment and help create a fairer and more equal society.

The EA 2010 places a general duty on public bodies to have due regard to three 'needs' when exercising their functions. The three needs are to:

1. Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act,
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The general duty applies to public authorities listed in Schedule 19 of to the Act as well as to other bodies (including private and third sector organisations) when exercising public functions.

Besides the general duty, the Scottish Ministers are subject to the [Scottish Specific Duties](#). The Specific Duties help listed authorities to meet the general duty. Regulation 5 requires public bodies to assess and review policies and practices. The Scottish Government has produced an initial EQIA, but must also “make such arrangements as it considers appropriate to review and, where necessary, revise any policy or practice that it applies in the exercise of its functions to ensure that, in exercising those functions, it complies with the equality duty.”