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**Date: 29 March 2021 – UK Cabinet Office**

**Consultation: *COVID-status certification***

**Consultation response on behalf of the Scottish Council on Human Bioethics:**

The **Scottish Council on Human Bioethics** (SCHB) is an independent registered Scottish charity composed of doctors, lawyers, biomedical scientists, ethicists and other professionals from disciplines associated with medical ethics.

The principles to which the Scottish Council on Human Bioethics subscribes are set out in the **United Nations Universal Declaration of Human Rights** which was adopted and proclaimed by the UN General Assembly resolution 217A (III) on the 10<sup>th</sup> of December 1948.

The SCHB is very grateful to the UK Cabinet Office for this opportunity to respond to the consultation on the **COVID-status certification**. It welcomes its intention to promote public consultation, understanding and discussion on this topic.

***Response to the Questions***

**Are you responding as an individual or an organisation?**

- Individual
- Organisation

Full name or organisation's name: **Scottish Council on Human Bioethics**

Phone number: **07 83 83 84 904**

Address: **15 North Bank Street, Edinburgh EH1 2LS**

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Where are you resident? (Please see one of the options below)

- Scotland
- Rest of the UK
- Rest of the world

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

## Background

The UK government is reviewing whether COVID-status certification could play a role in reopening the economy, reducing restrictions on social contact and improving safety. COVID-status certification refers to the use of testing or vaccination data to confirm in different settings that individuals have a lower risk of getting sick with or transmitting COVID-19 to others. Such certification would be available both to vaccinated people and to unvaccinated people who have been tested.

The UK government will assess to what extent certification would be effective in reducing risk, and its potential uses in enabling access to settings or relaxing COVID-secure mitigations. As such, the government is looking to consider the ethical, equalities, privacy, legal and operational aspects of a potential certification scheme, and what limits, if any, should be placed on organisations using certification. It is issuing this call for evidence to inform this review into COVID-status certification, to ensure that the recommendations reflect a broad range of interests and concerns.

## Questions

**Question 1: Which of the following best describes the capacity in which you are responding to this call for evidence?**

- ~~a) Business that owns or operates a venue that may make use of a potential certification scheme~~
- ~~b) Business with an interest in supporting a potential certification scheme~~
- ~~c) Other type of business~~
- ~~d) Business representative organisation or trade body~~
- ~~e) Representative of central or local government~~
- f) Charity or social enterprise**
- ~~g) Individual~~
- ~~h) Academic or researcher~~
- ~~i) Legal representative~~
- ~~j) Trade union or staff association~~
- k) Other – Bioethics Council**

**Question 2: In your view, what are the key considerations, including opportunities and risks, associated with a potential COVID-status certification scheme?**

We would welcome specific reference to:

### **a) clinical / medical considerations**

The Scottish Council on Human Bioethics (SCHB) notes that some kind of self-certification already exists in that new healthcare workers in the UK who will perform exposure-prone procedures are required to demonstrate that they are non-infectious for HIV and hepatitis C, and at low risk of transmitting hepatitis B. These clearance checks must be completed before confirmation of an appointment to a healthcare post.<sup>1</sup>

Accordingly, the Scottish Government recommends that all employers ensure that healthcare workers, including students, who have direct contact with blood, blood-stained body fluids, or patients' tissues, are offered hepatitis B immunisation, with post-immunisation testing of response. Those who receive a primary course of the vaccine should be tested for their immune status 1-4 months post-immunisation, to determine if they require further management (if they have not produced an adequately protective response).<sup>2</sup>

In this regard, it should be emphasised that data on the efficacy of vaccines in preventing a person from carrying or passing on the virus is, as yet, incomplete. Some individuals may also not benefit or may be put at risk from the vaccination.

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<sup>1</sup> <https://www.hse.gov.uk/biosafety/blood-borne-viruses/risk-healthcare-workers.htm>

<sup>2</sup> <https://www.hse.gov.uk/biosafety/blood-borne-viruses/risk-healthcare-workers.htm>

Furthermore, it should be noted that the COVID-19 tests are not always appropriate for mass testing. Thus, the PCR tests are highly sensitive and will test positive for small parts of viral RNA, even when there is no active virus present. It is also easy to contaminate a PCR test. Indeed, with the volume going through some of the testing laboratories, the patterns of testing have indicated that contamination may have happened in some cases.

In addition, it should be remembered that the vaccines currently being used are still experimental. Trials will not report on medium and long-term effects until 2023. These vaccines are not yet licensed and have only been approved under temporary authorisation.<sup>3</sup> Moreover, the protocol used in the trials, with three weeks between the vaccinations<sup>4</sup> is not the one used in the vaccination programme, which is using 12 weeks between vaccinations. Thus, research should continue about the protection offered by vaccines.

Finally, since a similarity may exist between the spike protein of SARS-CoV2 and one of the proteins that allows implantation of the placenta, this may have a detrimental effect on women who wish to become pregnant, after being vaccinated. Whether this is a long-term effect may not become clear until the vaccine has been in use for a while, and any associations may not be recognised.

## **b) legal considerations**

The SCHB notes that a number of countries already require vaccination certificates for travellers arriving from countries with risk of transmission of Yellow fever, Polio, and Malaria.<sup>5</sup> In this respect, both the Yellow Fever and Hepatitis B vaccines are fully licensed and have been in use for many years, having had a full evaluation of their side effects and efficacy.

This means that a system already exists for those who want to travel to countries where specific vaccines are currently mandatory. It is not possible to stop other countries from demanding such vaccinations. This is a matter for border control and travellers.

Moreover, the SCHB is aware that the EU is planning to introduce a digital certificate to kick-start foreign travel across the EU without discrimination.<sup>6</sup> The aim is to enable anyone vaccinated against Covid-19, or who tested negative or recently recovered from the virus, to travel within the EU. This means that whatever the UK government decides, if Scottish residents are to travel abroad, they will be required to have COVID-status certification.

The World Health Organization has also stated that it intends to create an 'international trusted framework' for safe travel, for which vaccinations would not be a precondition. But whatever system is implemented, it would be necessary to prove that the person wishing to travel is not sick or infectious.

NHS guidelines for COVID19 also advise that if certain 'exemptions' apply, an individual can still travel with an exemption letter. Thus, it would be useful to have confirmation that this will still be the case.

## **c) operational / delivery considerations**

The SCHB accepts that being tested and having COVID certification status must not be a pre-requisite of care provided by the NHS or any other organisation.

## **d) considerations relating to the operation of venues that could use a potential COVID-status certification scheme**

No response.

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<sup>3</sup><https://www.gov.uk/government/publications/regulatory-approval-of-covid-19-vaccine-astrazeneca/conditions-of-authorisation-for-covid-19-vaccine-astrazeneca>

<sup>4</sup> <https://www.bbc.co.uk/news/health-55145696>

<sup>5</sup> <https://www.who.int/ith/2016-ith-county-list.pdf>

<sup>6</sup> <https://www.bbc.co.uk/news/world-europe-56427830>

### **e) considerations relating to the responsibilities or actions of employers under a potential COVID-status certification scheme**

Employers should not be able to demand a COVID-status certification in order to reduce the costs of safety at work. If a genuine reason exists why somebody is not vaccinated, then their workplace should make special provision for them. Nobody should lose their jobs because they have not been tested or vaccinated.

### **f) ethical considerations**

The SCHB is of the opinion that the provision of testing and COVID-status certification should be balanced and proportionate to a person's human rights including the right to privacy and the right to be treated equally.

The SCHB is also aware that some individuals may not be vaccinated for a number of reasons, including health as well as conscience reasons and because an insufficient amount of vaccine is available. Thus, making testing or vaccination mandatory would be inappropriate. Testing and vaccination are medical procedures which require the explicit and free consent of the individual concerned. The National Health Service website clarifies British law:

*[A] person must give permission before they receive any type of medical treatment, test or examination. Such consent must be voluntary, meaning the decision to either consent or not to consent to treatment must be made by the person, and must not be influenced by pressure from medical staff, friends or family.<sup>7</sup>*

Finally, it should be noted that if a few individuals remain unvaccinated, they may still be protected by the herd immunity achieved by the infection or vaccination of about 90% of the population.

### **g) equalities considerations**

The SCHB is aware that a significant number of persons in the UK do not presently have any standard passport of any kind because they do not want one, meaning that they cannot travel abroad. Thus, a similar situation may arise if COVID-status certification is introduced.

The SCHB believe that all the provisions of the Council of Europe<sup>8</sup> Parliamentary Assembly (non-legally-binding) Resolution 2361 (2021) entitled *Covid-19 vaccines: ethical, legal and practical considerations* should be respected. This includes that Member States should:<sup>9</sup>

- Ensure that citizens are informed that the vaccination is not mandatory and that no one is politically, socially, or otherwise pressured to get themselves vaccinated, if they do not wish to do so themselves;
- Ensure that no one is discriminated against for not having been vaccinated, due to possible health risks or not wanting to be vaccinated;
- Put in place independent vaccine compensation programmes to ensure compensation for undue damage and harm resulting from vaccination.

### **h) privacy considerations**

The SCHB notes that a number of personal (and often private) elements (such as the date of birth and sex) are already present in a person's standard passport which is a requirement for travel.

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<sup>7</sup> <https://www.nhs.uk/conditions/consent-to-treatment/>

<sup>8</sup> The Council of Europe (which is not the EU) is an international body of 47 states of which the European Court of Human Rights, which enforces the European Convention on Human Rights, is part. The UK is a Member State of the Council of Europe.

<sup>9</sup> [https://pace.coe.int/en/files/29004/html?fbclid=IwAR1HrpB1giQFPm0mMsLcswGzeePH2AcHq6I4Ef6Chk\\_XqT0apRlyxV2Isl8](https://pace.coe.int/en/files/29004/html?fbclid=IwAR1HrpB1giQFPm0mMsLcswGzeePH2AcHq6I4Ef6Chk_XqT0apRlyxV2Isl8)

If an individual decides to be tested and have the vaccine, he or she should not be compelled to share his or her confidential medical status with anyone else in order to go about their normal day to day business.

The Council of Europe Convention on Human Rights, indicated in Article 2 that: "Everyone has the right to respect for his private and family life, his home and his correspondence." As such, it has been argued, and apparently assumed in European Court of Human Rights judgements, that this encompasses "the right to be free from non-consensual medical treatment or examination".<sup>10</sup>

Under the *Data Protection Act UK 2018*<sup>11</sup> all health information is classified as special category personal data and regarded as confidential. The processing of personal information revealing data concerning health should not be possible outside of a clinical setting. Therefore, any COVID testing, vaccination and certification must be administered and controlled by the NHS in Scotland. It is not appropriate for the Scottish Government to hold any personal health data. Such information is normally held within the NHS boards which have Caldicott Guardians appointed to each one of them, to protect this personal data from being used inappropriately.<sup>12</sup>

**Question 3: Are there any other comments you would like to make to inform the COVID-status certification review?**

*Scottish Council on Human Bioethics Response:*

The SCHB is of the opinion that the general public in Scotland does not understand how testing and vaccination data all fits together and how central human rights provisions may be challenged by such procedures.

The Council also believes that the use of cell lines derived from aborted fetuses in the development and production of the vaccine will cause some people to have ethical issues with a number of vaccines. This may result in them refusing such a treatment. Moreover, information should always be provided as to the origin of the vaccines being offered.

Finally, the SCHB notes that only two weeks were given by the UK Cabinet Office to respond to this consultation. As a result, the SCHB would like to officially and strongly protest about the time given to respond to the consultation. It is totally unrealistic for the SCHB, which needs to consult a significant number of its members, to respond in such a short time. Democracy and responsibility are not served by such unworkable deadlines.

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<sup>10</sup> <https://tcm.tsu.ge/index.php/TCM-GMJ/article/view/104>

<sup>11</sup> <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

<sup>12</sup> <https://www.iwmp.co.uk/images/pdf/Caldicott-report1997.pdf>