

LIBERTY

LIBERTY'S RESPONSE TO THE DEPARTMENT OF HEALTH AND SOCIAL CARE'S PROPOSAL FOR MANDATORY COVID CERTIFICATION IN A PLAN B SCENARIO

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ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at <https://www.libertyhumanrights.org.uk/policy>.

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INTRODUCTION

Liberty welcomes the opportunity to respond to the Department of Health and Social Care's Proposal for mandatory certification in a Plan B Scenario call for evidence.

SETTINGS

QUESTION 1

Do you think that the list of settings is too narrow or captures too many settings?
Too many settings.

Which should be excluded from certification?
All of them.

VISITORS AND STAFF

QUESTION 2

Which of the following best describes your opinion about the COVID-19 vaccination status of people who choose to attend venues and events where certification would be required, if Plan B is implemented?

I don't mind either way.

QUESTION 3

To what extent do you agree or disagree that visitors to venues and events where certification would apply should be required to be fully vaccinated to enter, unless they are exempt?

Strongly disagree.

QUESTION 4

To what extent do you agree or disagree that people working at the venues and events where certification would apply should be required to be fully vaccinated or test regularly to enter, unless exempt?

Strongly disagree.

QUESTION 5

Do you think unvaccinated people working at venues to which certification would apply should be supervised or unsupervised when taking regular tests?

I don't know.

QUESTION 6

Do you think that everyone working in venues to which certification would apply, or only those in customer-facing roles, should be required to show they are vaccinated, exempt or being testing regularly?

I don't know.

QUESTION 7

Please provide any additional comments you have on requirements on people working at venues where certification would apply. (maximum 500 words)

1. Liberty is strongly opposed to the implementation of any covid-status certification scheme (including vaccine certification), including for venues and events. So far, the Government has left it up to individual businesses to decide whether to set up their own covid-status certification, with the only requirement being that such scheme must be consistent with the Equality Act. The Government has legislated to make vaccination a condition for working in a care home, with limited exceptions for people under the age of 18 and those who cannot be vaccinated for clinical reasons.
2. We are concerned about the implications of a mandatory covid-status certification scheme for workers' rights. For example, information on why an employee might not be able to receive a vaccine could lead to disclosing personal information, such as being pregnant, or potentially lead to an employer seeing where their employee had checked into over a certain time-period.
3. Further, we have concerns about mission creep. Once a company has invested in a system, it could be repurposed. This is particularly important given growing concerns about workplace surveillance.¹ Indeed, we are concerned by the question above that asks the public to adjudicate whether workers who have not received the vaccine should be subject to 'supervision' – it is unclear what the nature of this supervision would be, and how it could take place without endangering workers' right to make their own decisions about their healthcare and their privacy.
4. We do not believe that a general covid-status certification scheme for all venues and events – even with limited exceptions – would be necessary and proportionate. There may be limited and narrow occasions in an employment context where requiring proof of coronavirus-status may be necessary and proportionate. For example, within one-to-one personal care situations, which many disabled people rely on and in which the risk for both the individual employer and personal assistants is high.

¹ Chyi, N., *The Workplace-Surveillance Technology Boom*, Slate, 12 May 2020, available at: <https://slate.com/technology/2020/05/workplace-surveillance-apps-coronavirus.html>

Disabled people's rights are an important consideration when thinking through which specific employment situations could be assessed as necessary and proportionate. These situations must be tightly limited to avoid mission creep and Liberty have a strong preference for education-based alternatives. Some disabled activists have also voiced concerns that disabled people might be subject to discrimination in work settings should health surveillance become normalised.²

EXEMPTIONS

QUESTION 8

Do you think other groups should be exempt from requirements? If yes, please give reasons for your answer. (maximum 150 words)

Yes.

QUESTION 9

Are there any groups, particularly those with protected characteristics, that you think would benefit from vaccine certification becoming mandatory in the settings listed? (maximum 150 words)

5. As noted above, disabled people's rights are an important consideration when thinking through the question of mandatory vaccine certification, and there may be cases where covid-status certification is a proportionate response. However, we believe the settings listed in the Plan B scenario – which ranges from nightclubs, to indoor crowded settings, to outdoor crowded settings, to any settings with 10,000 or more attendees – far exceeds the limited and narrow occasions in which requiring proof of vaccine status may be necessary and proportionate.

QUESTION 10

Are there any groups, particularly those with protected characteristics, that you think would be placed at a disadvantage from vaccine certification becoming mandatory in the settings listed? (maximum 150 words)

6. Negatively affected groups may include communities of colour with historical concerns regarding unethical medical treatment^{3,4,5} and migrants who have legitimate fears over data-sharing.⁶ Those who lack effective access to healthcare – including

² Pring, J., 'Vaccine passport' scheme is 'deeply troubling', say disabled artists, Disability News Service, 1 April 2021, available at: <https://www.disabilitynewsservice.com/vaccine-passport-scheme-is-deeply-troubling-say-disabled-artists>

³ Morgan, W., *Poor vaccine take-up in BAME communities is not just down to hesitancy*, The Conversation, 1 March 2021, available at: <https://theconversation.com/poor-vaccine-take-up-in-bame-communities-is-not-just-down-to-hesitancy-155691>

⁴ Gamble, V.N., *Under the shadow of Tuskegee: African Americans and health care*, November 1997 87(11), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1381160/>

⁵ Scientific Advisory Group for Emergencies, *Factors influencing COVID-19 vaccine uptake among minority ethnic groups*, 15 January 2021, available at: <https://www.gov.uk/government/publications/factors-influencing-covid-19-vaccine-uptake-among-minority-ethnic-groups-17-december-2020>

⁶ Liberty, *Care Don't Share*, 3 December 2018, available at: <https://www.libertyhumanrights.org.uk/issue/care-dont-share/>

migrants⁷ and Gypsy, Roma, and Traveller communities⁸ – and those without access to smartphones and the NHS Covid Pass may also be negatively affected.⁹ Some disabled activists have warned that vaccination certification could set a ‘troubling and ableist precedent which potentially undermines existing protections in equality and employment law’.¹⁰

FURTHER COMMENTS

QUESTION 11

We welcome any further comments you may have relating to this consultation. (maximum 500 words)

7. Liberty opposes the introduction of a mandatory covid certification scheme in a Plan B scenario. On one level, evidence in favour of covid-status certificates remains unclear – indeed, the Public Administration and Constitutional Affairs Committee found little evidence that the introduction a Covid-status certification regime would actually increase public confidence.¹¹ Moreover, the unintended consequences for public health cannot be ruled out. Mandating covid-status certification may damage the vaccine roll-out – which relies heavily on trust – because individuals who do not get the vaccine may perceive such schemes as health surveillance or a *de facto* mandatory vaccination programme (given that failure to get the vaccine may result in restrictions on movement and employment). Research shows that mandatory vaccination programmes are likely to be counterproductive and risk making people more resistant to getting vaccinated.¹² Indeed, the BMA warned in response to the Government’s plan to require care home workers to be vaccinated – which has since become law after minimal parliamentary scrutiny – that such a scheme might result in erosion of trust and hardened stances on declining vaccination.¹³
8. Crucially, the introduction of covid-status certificates would not be happening in a vacuum. The proposals cannot be assessed purely as a temporary and isolated public health-related measure. Instead, they need to be viewed in the context of systemic inequality, the Government’s response to the pandemic so far, and plans for rolling out digital ID systems. We are concerned that any such scheme would entrench,

⁷ Hamada, R., Mellino, E., Gayle, V., Haque, S., Griffiths, S., Bushi, R., and Vinter, R., *Most GP surgeries refuse to register undocumented migrants despite NHS policy*, The Bureau of Investigative Journalism, 15 July 2021, available at: <https://www.thebureauinvestigates.com/stories/2021-07-15/most-gp-surgeries-refuse-to-register-undocumented-migrants>

⁸ White, N., *UK GPs ‘refused registration to Gypsy, Roma and Traveller patients’ during Covid-19 pandemic*, The Independent, 8 July 2021, available at: <https://www.independent.co.uk/news/uk/home-news/covid-uk-gps-gypsy-travellers-b1880030.html>

⁹ Disability Sheffield, *Concern over vaccine passport phone app*, 26 May 2021, available at:

<https://www.disabilitysheffield.org.uk/blog/concern-over-vaccine-passports-phone-app-2021-05-26>

¹⁰ Pring, J., *‘Vaccine passport’ scheme is ‘deeply troubling’, say disabled artists*, Disability News Service, 1 April 2021, available at:

<https://www.disabilitynewsservice.com/vaccine-passport-scheme-is-deeply-troubling-say-disabled-artists>

¹¹ Public Administration and Constitutional Affairs Committee, *No Justification for Covid passports, say Committee*, 12 June 2021, available at: <https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/news/155788/no-justification-for-covid-passports-say-committee/>

¹² Betsch, C., and Bohm, R., *Detrimental effects of introducing partial compulsory vaccination: experimental evidence*, European Journal of Public Health, 21 August 2015 26(3), available at: <https://academic.oup.com/eurpub/article/26/3/378/2467110>

¹³ BMA, *Mandatory vaccination for NHS staff is incredibly complex issue, say BMA*, 16 June 2021, available at:

<https://www.bma.org.uk/bma-media-centre/mandatory-vaccination-for-nhs-staff-is-incredibly-complex-issue-says-bma>

rather than address, discrimination and in doing so actually exacerbate health inequalities.

9. Liberty has always backed necessary and proportionate measures to protect public health. We believe that the Government should prioritise meaningful and effective access to healthcare, education to allow people to make informed choices about the vaccine, and clear and transparent communication to build public trust in its strategy to deal with the pandemic. We are concerned that the Government's failure to maintain a consistent line on the issue of covid-status certification – its repeated u-turns on the subject – and its insistence on criminal justice measures such as those under the Coronavirus Act 2020 and Fixed Penalty Notices to deal with breaches of regulations – may have actually damaged public trust in its ability to deal with the ongoing pandemic. We strongly urge DHSC to reconsider its proposal to make covid-status certification mandatory and instead devise strategies that will effectively protect everyone.