

BIG BROTHER WATCH

**Big Brother Watch Briefing
on the Scottish
Government's 'COVID
Vaccine Certification
Scheme' motion (ref. S6M-
01123)**

September 2021

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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INTRODUCTION

We welcome the opportunity to provide this briefing to the Scottish Parliament ahead of the 'COVID Vaccine Certification Scheme' motion on 9th September 2021.

Big Brother Watch is leading the campaign against COVID passes across the UK. Our concerns are shared by rights groups, including Liberty, Privacy International, Pregnant then Screwed, Migrants Organise, the Joint Council for the Welfare of Immigrants, Open Rights Group, the Runnymede Trust and medConfidential, as well as more than 90 UK parliamentarians from across parties. All of these groups and individuals have joined us in signing a pledge rejecting divisive and discriminatory COVID passes.¹

RECOMMENDATIONS

- 1. Any COVID Vaccine Certification scheme must be subject to full parliamentary scrutiny and a vote on legislation. A vote on a motion does not constitute meaningful parliamentary approval.**
- 2. The Scottish Government must publish the evidence basis for the introduction of a COVID Vaccine Certification scheme, as well as an Equalities Impact Assessment and a Data Protection Impact Assessment.**
- 3. The Scottish Government must take steps to protect freedom of assembly and ensure the right to protest is never restrained on the grounds of health or vaccine status.**
- 4. MSPs should vote against the 'COVID Vaccine Certification Scheme' motion and reject discriminatory and divisive COVID Vaccine Certification.**

¹ <https://bigbrotherwatch.org.uk/campaigns/stopvaccinepassports/#crosspartycampaign>

The 'COVID Vaccine Certification Scheme' motion (ref. S6M-01123) seeks the approval of the Scottish Parliament for the "implementation of a COVID Vaccine Certification scheme [...] apply[ing] to nightclubs, sexual entertainment venues, indoor unseated live events with 500 or more attendees, outdoor unseated live events with 4,000 or more attendees and all events with 10,000 or more attendees".²

The motion does not provide details on how and by whom the scheme will be enforced, the "measures" that will supposedly "ensure digital inclusivity and [...] ensure that disabled people are not disproportionately impacted", how those exempt from vaccination will be able to access events and businesses, how children will be impacted by this scheme, how privacy and personal data will be protected and what protections will be in place for the right to protest.

Parliamentary procedure

It is entirely unacceptable for the Scottish Government to seek to introduce a COVID Vaccination Certification scheme on the basis of a motion, rather than a vote on legislation. The policy was announced without a public or industry consultation, and the motion was published just two days before the debate on 9th September. This policy represents one of the most significant changes in approach to public health seen in modern British history and a profound change to public life, privacy norms and basic rights and liberties. It is deserving of the most rigorous and thorough scrutiny from the Scottish Parliament.

The Bingham Centre for the Rule of Law firmly states that any vaccine passport policy should be subject to the highest form of parliamentary scrutiny:

"Democracy requires that rules should be not simply imposed, but decided by elected representatives. When it comes to something as important as vaccine passports, it is insufficient for the law to come solely from ministers. Instead, it needs to be made through primary legislation: debated, scrutinised, justified and then enacted by parliament."³

RECOMMENDATION 1: Any COVID Vaccine Certification scheme must be subject to full parliamentary scrutiny and a vote on legislation. A vote on a motion does not constitute meaningful parliamentary approval.

The approval of a 200-word motion cannot be a substitute full Parliamentary approval for the introduction of a vaccine passport scheme. If the Scottish Government seeks to mandate COVID vaccine passports, they should introduce a Bill, as well as publishing a Data Protection Impact Assessment and an Equalities Impact Assessment.

RECOMMENDATION 2: The Scottish Government must publish the evidence basis for the introduction of a COVID Vaccine Certification scheme, as well as an Equalities Impact Assessment and a Data Protection Impact Assessment.

² <https://www.parliament.scot/chamber-and-committees/votes-and-motions/votes-and-motions-search/S6M-01123>

³ <https://binghamcentre.biicl.org/comments/114/vaccine-passports-must-be-legislated-for-properly-through-parliament?cookieset=1&ts=1631115331>

No justification in public health

There is no evidence that vaccine passports will improve public health.

COVID Vaccine Certification does not prove that an individual does not have coronavirus or cannot spread coronavirus. Vaccination status primarily tells the individual about their own risk of illness from the virus.

The available vaccines are not able to prevent infections or transmission of the virus. Whilst the vaccines have drastically cut severe illness, hospitalisations and deaths, Imperial College's REACT study found they have little over 50% efficacy in preventing infections.⁴ The same study found that almost half of covid cases in mid-July were among people who had received two vaccinations. Therefore, during a wave of infections, transmission of the virus is highly likely in vaccinated-only environments. A paper by researchers at Oxford University found that peak viral load of the Delta strain of the virus is similar in unvaccinated people as it is in vaccinated people, meaning there is a similar risk in an infected vaccinated person spreading the virus as an infected unvaccinated person.⁵

The availability of effective vaccines means that those most vulnerable to COVID-19 are highly protected from serious illness. In Scotland, over 91% of people aged over 18 years old have received a first dose and over 84% have received their second dose.⁶ 94% of the population has antibodies.⁷

The Scottish Government has failed to provide any material to support their claim that vaccine passports will reduce the rate of coronavirus transmission. The only parliamentary committee in the UK to analyse Covid passes in detail, the UK Parliament's Public Administration and Constitutional Affairs Committee, concluded that there is "no justification for them in the science and none in logic".⁸ In the Covid-19 Committee, Conservative and Labour MSPs pushed Deputy First Minister John Swinney to share the evidence behind the announcement, with Alex Rowley MSP telling the Minister (who admitted there were "different" and "contested" views on the evidence basis for the scheme):

"Before [the vote] next week, you need to show us the evidence for why the specific measures that you have talked about have been chosen, what you believe will be achieved and what other options have been considered for increasing uptake among the under-40s."⁹

The Scottish Government has failed to provide this information.

Unclear and arbitrary definitions

The motion contains scant detail on which events, businesses and venues might be subject to a mandatory COVID Vaccine Certification scheme, beyond vague wording about "live" events, seated or unseated events and number of attendees. There is no mention of the impact the scheme would have on the right to protest, only that "all events with 10,000 or more attendees" will require vaccine passports. This omission is particularly alarming. Freedom of assembly must never be constrained on the grounds of health status.

4 <https://www.reuters.com/world/uk/english-study-finds-50-60-reduced-risk-covid-double-vaccinated-2021-08-03/>

5 <https://www.ndm.ox.ac.uk/files/coronavirus/covid-19-infection-survey/finalfinalcombinedve20210816.pdf>

6 https://public.tableau.com/app/profile/phs.covid.19/viz/COVID-19DailyDashboard_15960160643010/Overview (accessed 8th September 2021)

7 <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19latestinsights/antibodies>

8 <https://committees.parliament.uk/work/1104/covid-19-vaccine-certification/news/155788/no-justification-for-covid-passports-say-committee/>

9 <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13275>

RECOMMENDATION: The Scottish Government must take steps to protect freedom of assembly and ensure the right to protest is never restrained on the grounds of health or vaccine status.

MSPs and industry bodies have rightly pointed out the arbitrary line between nightclubs and large pubs which play music and have long opening hours, only one of which will require vaccine passports. Stephen McGowan, head of licensing at TLT Glasgow, has said the defining nightclubs would require "clairvoyance and caveats" because there is single alcohol licence for any type of business: "Proposing a vaccine passport law which only applies to 'nightclubs' is a problem – no such definition exists".¹⁰ Dividing venues up in such a way undermines public health reasoning for vaccines passports.

A COVID Vaccine Certification scheme assumes that by designating certain venues or events as 'safe', the rates of transmission will reduce to an extent that makes business closures unnecessary. This is a fantasy without scientific or logical backing. People attending venues and events that require vaccine passports will still be mixing with the wider population in a myriad of other settings, in a pub before a nightclub, on public transport before a sporting fixture, in shops and homes before a gig. These arbitrary lines will serve only to create an illusion of safety.

Vaccine certification is not a sensible public health solution, but rather a form of safety theatre.

Coercion

Government Ministers have stressed that this policy is motivated in large part by a desire to drive vaccine uptake. When asked by Conservative MSP Murdo Fraser whether the Government would consider adding the option of a negative test as an alternative to vaccination, the First Minister said that this would "effectively let people off the hook of getting vaccinated, if they are eligible".¹¹ This language is concerning and makes it plain that a vaccine pass is designed to coerce people into receiving vaccination. Indeed, Health Minister Humza Yousaf stated the following day that one of the main benefits of introducing vaccine passes would be "incentivising vaccination,"¹² whilst acknowledging that "if you are in these settings with both doses of the vaccine, the virus is still there – you can still catch it."¹³

To date, encouragement and education have proved extremely successful approaches to achieving high vaccination rates in Scotland and the rest of the UK. Abandoning this strategy would be misguided and counterproductive. Recent research from The Vaccines Confidence Project at the London School of Hygiene and Tropical Medicine found the introduction of vaccine passports would increase vaccine hesitancy, particularly amongst Black British respondents, young people and non-English speakers,¹⁴ the very groups in which vaccine hesitancy is already highest.¹⁵

In July, Deputy First Minister John Swinney acknowledged these issues with coercion. He told Good Morning Scotland that vaccine passports were "the wrong way to handle" vaccine hesitancy and that and that he "would be much more convinced by an argument that was about engaging people, taking people with us and explaining the rationale".¹⁶

¹⁰ <https://www.bbc.co.uk/news/uk-scotland-58422607>

¹¹ <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13264&i=120294>

¹² <https://www.thenational.scot/news/19553773.covid-scotland-humza-yousaf-explains-vaccine-certificate-plan/>

¹³ <https://www.bbc.co.uk/news/uk-scotland-58420003>

¹⁴ <https://www.medrxiv.org/content/10.1101/2021.05.31.21258122v1.full.pdf>

¹⁵ <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/coronavirusandvaccinehesitancygreatbritain/9august2021>

¹⁶ <https://www.express.co.uk/news/politics/1468778/snp-news-john-swinney-boris-johnson-covid-vaccine-large-events-michael-gove-latest>

Vaccine passports would clearly cause people to feel coerced, rather than supported, to receive vaccines. They would have a similar effect to mandatory vaccine policies, which are typically imposed by exclusion or penalties for those who decline vaccines. The penalty of reduced liberties for otherwise healthy individuals who refuse medical treatment would mark a serious change in our public health system.

RECOMMENDATION 3: MSPs should vote against the 'COVID Vaccine Certification Scheme' motion and reject discriminatory and divisive COVID Vaccine Certification.

Discrimination

The effect of COVID Vaccine Certification would be to socially and economically exclude people without a COVID vaccine and deny them basic freedoms. In doing so, all citizens would be treated as potentially infectious and some of the most marginalised in society would suffer either direct or indirect discrimination.

Just two days before the First Minister's announcement, Patrick Harvie, co-leader of the Scottish Greens and Government Minister, warned that vaccine passports posed "a real danger of generational injustice" and suggested that the Government "focus on making places safer for everyone."¹⁷ Previously, the Minister had said vaccine passports risked "making the social inequality that we face today even worse" and warned they "could set a dangerous precedent for the longer term, in that people's civil rights would be dependent on their medical history." In July, he said they would "deepen discrimination against those who have not yet been vaccinated" and "deepen inequality."¹⁸ We agree with the Minister's assessment.

Protected characteristics

It is unlawful and wrong to discriminate against people with 'protected characteristics', many of which are engaged by a COVID Vaccine Certification scheme, including age, disability, pregnancy and religion or belief. Article 14 of the European Convention on Human Rights and the Equality Act 2010 protect individuals from unlawful discrimination.

Introducing segregation according to vaccination status would result in discrimination against the following groups:

Young people would be discriminated against, since there will be lower and slower vaccine uptake as young people are both generally at a low risk of serious illness from COVID and last in line to be offered a vaccination. Further, if vaccines are required annually/periodically, young people could be discriminated against on a corresponding cycle as they will always be last in line to receive vaccines. Older people could also be affected on a cycle, as over-70s have already been told they may require booster vaccines this year.

Disabled people could be discriminated against as some medical conditions prevent individuals from being able to receive a vaccination. Currently the Scottish Government has not explained how individuals will prove their exemption – but many disabled people may feel uncomfortable with sharing details of their exemption with bouncers and businesses.

¹⁷ <https://www.thetimes.co.uk/article/the-times-view-of-the-snps-introduction-of-jab-proof-for-events-passport-to-progress-0zrmqs7wg>

¹⁸ <https://www.express.co.uk/news/politics/1485782/Scotland-vaccine-passport-nicola-sturgeon-green-party-deal>

Women who are pregnant, breastfeeding or attempting to conceive are also more unlikely to have received a coronavirus vaccine. The Royal College of Obstetricians and Gynaecologists has found that 58% of pregnant women have not received a coronavirus vaccine.¹⁹ It is unacceptable to exclude pregnant women from venues at such a high rate.

Some people with religious or other beliefs may be discriminated against, if those beliefs deter them from receiving a vaccine.

Poor and marginalised groups

Discrimination, inequality and unfairness would be caused not only by medical eligibility for vaccination but by accessibility of vaccinations. Research indicates that people from ethnic minority groups, people with lower levels of education and people on lower incomes are the most 'hesitant' or unlikely to receive COVID vaccines.²⁰ It would be wrong to exclude sections of society based on vaccination status.

Further, many of the estimated 1 million undocumented migrants in the UK are either unable to access²¹ or fearful of accessing health services and may be more apprehensive still if vaccine certificates, akin to internal passports, become an everyday requirement.

Health Minister Humza Yousaf has acknowledged these problems himself:

“One of the first meetings I had as cabinet secretary for health was with human rights groups and organisations and they were vehemently opposed to Covid vaccine passports, because they were concerned about the fact they might increase the inequality gap, that there would be ethical issues.

“I’ll give you one example – we know that uptake of vaccines has been lower in the African and Polish communities. Therefore, would it be correct and right to deny entry where some groups may be more disproportionately affected than others?”²²

We cannot simply erase histories and experiences of discrimination and hostility that have created distrust. The best way to ensure marginalised groups are included in public health measures is to create an enabling, not a punitive, environment. Health certificate segregation would only deepen discrimination and alienate people even more. This would be disastrous for trust in public health authorities when trust is critical for successful pandemic management.

International impact

There are billions of people across the world who are not expected to have access to COVID vaccines for years to come. More than 85 less economically developed countries in Africa, Asia and South America will not have widespread access to COVID vaccines until at least 2023.²³ Indeed, the World Health Organisation remains opposed to the use of vaccine passports for access to venues and for travel, due to the “huge issue of vaccine equity in the world”.²⁴

¹⁹ <https://www.msn.com/en-gb/news/newslondon/fifty-eight-per-cent-of-pregnant-women-are-refusing-covid-vaccines/ar-AAMbyhe>

²⁰ <https://www.medrxiv.org/content/10.1101/2020.10.21.20216218v1>

²¹ <https://www.thebureauinvestigates.com/stories/2021-07-15/most-gp-surgeries-refuse-to-register-undocumented-migrants>

²² <https://www.pressandjournal.co.uk/fp/news/politics/scottish-politics/3327712/humza-yousaf-resists-vaccine-passports-despite-concern-over-lack-of-first-jabs/>

²³ <https://www.eiu.com/n/85-poor-countries-will-not-have-access-to-coronavirus-vaccines/>

²⁴ <https://thehill.com/policy/healthcare/546712-who-does-not-support-mandatory-vaccine-passports>

Individuals who have been vaccinated abroad will struggle prove their vaccine status to NHS Scotland, meaning they will be unable to receive a COVID Vaccine Certificate.²⁵ This means that those arriving from abroad, whether tourists or British residents who returned to their homes abroad during the pandemic, will not be able to prove their vaccine status and will face exclusion from events and businesses. Even those who have been vaccinated in England, Wales or Northern Ireland are struggling to display that vaccine status in Scotland. Among them is SNP MSP John Mason, who raised his concerns:

"I have constituents contacting me who had one jab in Scotland and one perhaps in England or Germany or some other country – so they've got a problem.

"And I myself had both my jags in Easterhouse in Glasgow, but the NHS system says I only had one jab, so I cannot get a certificate.

"The NHS in Glasgow said that that is a national problem, not just a local problem.

"So how robust are our records?"²⁶

There is also no confirmation that those with vaccinations other than Moderna, Astrazeneca, Pfizer or Janssen will qualify for a COVID Vaccine Certificate, despite millions across the globe having received either Sputnik V, Sinovac or Sinopharm vaccines.

As we emerge from the pandemic, disproportionate vaccine requirements should not unfairly impede the rights, family reunions, work and study opportunities and freedom of movement of individuals from lower-income countries.

Industry opposition

Scottish industry bodies have not welcomed the Government's intention to introduce vaccine certification.

The Scottish Licensed Trade Association branded the scheme a "most unwelcome development."²⁷ Mike Grieve, chair of the Night Time Industries Association Scotland and owner of the Subclub in Glasgow, said the plans were "completely incoherent."²⁸ Neil Doncaster, chief executive of the Scottish Professional Football League, told BBC Sport Scotland:

"It's not clear what IT infrastructure will be in place, what timescales clubs will be asked to work to, or what can be done for those without smartphones.

"And it's not clear if it's going to cut across terms and conditions of seasons tickets already bought by people across the land."²⁹

The Scottish Football Association released a joint statement raising concerns over the "considerable unintended consequences" of vaccines passports for the industry.³⁰

²⁵<https://nhs-digital.zendesk.com/hc/en-gb/articles/4402324373137-I-had-my-vaccination-abroad-how-do-I-get-this-into-the-NHS-App>

²⁶<https://www.heraldscotland.com/politics/19553879.snp-msp-raises-concerns-nhs-records-wrongly-state-one-jag/>

²⁷<https://www.thenational.scot/news/19553773.covid-scotland-humza-yousaf-explains-vaccine-certificate-plan/>

²⁸<https://www.theguardian.com/society/2021/sep/02/scottish-opposition-parties-outraged-vaccine-passport-sturgeon>

²⁹<https://www.theguardian.com/society/2021/sep/02/scottish-opposition-parties-outraged-vaccine-passport-sturgeon>

³⁰<https://www.67hailhail.com/news/sfas-joint-response-group-cynical-over-celtic-park-vaccine-passports/>

Liz Cameron, chief executive of the Scottish Chambers of Commerce, said businesses needed urgent clarity on where vaccine certifications could be required, and warned that vaccine passes could be a “deterrent” for customers.³¹ UKHospitality Scotland said the announcement would “cause dismay amongst businesses” and said the fact that there had been no engagement with the sector before the announcement was “extremely concerning.”³²

Businesses will rightly be concerned that COVID Vaccine Certification will harm, rather than help recovery, as well as proving costly and difficult to enforce. It is unfair to put businesses on the front line of public health and expect those in the hospitality and events industry to operate health checkpoints.

There is no silver bullet out of the pandemic. Free and fair access to vaccines, healthcare, quarantine support, test and trace, and proportionate safety measures are needed to protect public health and make venues as safe as possible. COVID Vaccine Certification is a costly, ineffective and discriminatory approach to public health.

³¹<https://www.bbc.co.uk/news/uk-scotland-scotland-politics-58453551>

³² <https://www.scotsman.com/news/politics/covid-scotland-dismay-as-nicola-sturgeon-announces-vaccine-passports-for-nightclubs-and-football-matches-3367462>