

COVID-19 Recovery Committee

4th Meeting, 2021 (Session 6), Thursday 16 September 2021

Vaccine certification

Introduction

1. At this meeting, the Committee will take evidence on the Scottish Government's proposals to introduce a mandatory COVID vaccine certification scheme in Scotland from the following—

- Dr Catriona McMillan, Convener of the Law Society of Scotland's Health and Medical Law Sub-Committee, Law Society of Scotland;
- Gavin Stevenson, Scottish Licensed Trade Association; and
- Neil Doncaster, Chief Executive, Scottish Professional Football League and a Member of Scottish Football's COVID-19 Joint Response Group

Background

2. [On 1 September 2021](#), the Scottish Government set out its position in relation to vaccine certification schemes during the First Minister's (FM) statement to Parliament. The FM said—

“We propose that, subject to Parliament's agreement, vaccination certification should be introduced later this month—once all adults have had the opportunity to be fully vaccinated—for the following events and venues: first, nightclubs and adult entertainment venues; secondly, unseated indoor live events with more than 500 people in the audience; thirdly, unseated outdoor live events with more than 4,000 people in the audience; and lastly, any event of any nature that has more than 10,000 people in attendance. We do not currently consider that it would be appropriate to introduce certification for the hospitality industry as a whole, and we hope that it will not be necessary to do so. However, we will keep that position under review.”

3. On 9 September 2021, the Scottish Government published [further details of its proposals](#) and information on how the scheme would operate. The Parliament then debated this issue in the Chamber on [Thursday 9 September 2021](#) and, following debate, agreed the following motion, S6M-01123—

“That the Parliament commends the extraordinary effort of vaccination teams throughout Scotland, which means that, as of 6 September 2021, 84% of eligible over 18-year-olds were double-vaccinated against COVID-19; recognises that case numbers remain stubbornly high and that action is needed from all sectors to ensure that baseline COVID measures are rigorously implemented; acknowledges that a number of other countries have introduced COVID certification schemes and that the UK Government has plans to introduce a vaccine certification scheme in England; believes that, in line with the Scottish Government’s strategic intent, a COVID Vaccine Certification scheme can provide a targeted means to maximise Scotland’s ability to keep certain higher risk settings open, while reducing the impact of transmission and encouraging the remaining sections of the population to get vaccinated; supports the implementation of a COVID Vaccine Certification scheme; agrees that the scheme will apply 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; notes that measures are being taken to ensure digital inclusivity and to ensure that disabled people are not disproportionately impacted, and agrees that this scheme will be kept under regular review.”

4. In order to give effect to this policy and introduce a mandatory COVID vaccine certification scheme, the Scottish Government must bring forward regulations which the Committee and Parliament will be asked to approve.

Evidence

5. The Committee has received submissions from the Law Society of Scotland, Scottish Licensed Trade Association and Scottish Football’s COVID-19 Joint Response Group, which are attached at the Annexe to this note.

Next steps

6. The Committee expects to continue to take evidence from stakeholders on this issue at its next meeting on 23 September and at future sessions with the Deputy First Minister and Cabinet Secretary for COVID Recovery.

**Committee Clerks
September 2021**



Annexe

Written Evidence

COVID-19 Recovery Committee of the Scottish
Parliament

Vaccination Certification Schemes

13 September 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to provide written evidence to the Scottish Parliament's COVID-19 Recovery Committee in advance of the evidence session on Thursday 16 September 2021. The purpose of the evidence session is to hear views on the implications of introducing a vaccine certification scheme and to help inform the Committee's future sessions with the Deputy First Minister and the Cabinet Secretary for Covid recovery. We have the following comments to put forward for consideration.

Parliamentary Scrutiny and Rule of Law

The Scottish Government set out its position in relation to vaccine certification schemes during the First Minister's statement to Parliament on 1 September 2021.¹ Further detail of the proposals was published on 9 September² and Parliament debated the issue later the same day.³

We understand that the Scottish Government proposes to bring forward Regulations to introduce a mandatory vaccine certification scheme from 1 October 2021. These Regulations are not yet available, however we understand that once in force they will be reviewed every three weeks and, subject to an decision by Parliament to extend, will expire on 28 February 2022 in line with other Covid measures under the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021.

We note that the Minister for Parliamentary Business has indicated that that Regulations giving effect to a vaccine certification scheme are likely to be subject to the made affirmative procedure.⁴ Use of the made affirmative procedure reduces the opportunity for scrutiny of proposed legislation. In considering the analogous matter of Covid-Status Certification, the House of Commons Public Administration and

¹ <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13264> at col 26-

² <https://www.gov.scot/publications/coronavirus-covid-19-mandatory-vaccine-certification/>

³ <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13282> at col 77-

⁴ Letter from the Minister for Parliamentary Business in response to the Conveners letter regarding COVID passports to Stuart McMillan MSP Convener of the Delegated Powers and Law Reform Committee 9 September 2021 <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee/correspondence/2021/covid-passports-minister-response>

Constitutional Affairs Committee has states that such proposals should only be brought forward through primary legislation to allow Parliament to consider, scrutinise and where necessary amend such proposals.⁵

Whilst we recognise that the nature of Covid-19 and the serious and imminent threat it posed to the community at large may necessitate further use of the made affirmative procedure in responding to the pandemic, it is essential that regulations are still subject to appropriate scrutiny and effective review. Any extension of the proposed scheme, whether to other sectors or beyond the proposed end date of 28 February 2022, should be brought forward in sufficient time to allow for appropriate parliamentary scrutiny. If the Government wishes to continue with the proposal that the regulations should be “made affirmative” it should consult broadly on a draft of the regulations in advance of their finalisation.

Respect for Human Rights

We note that the aim of the Scottish Government’s proposed mandatory vaccine certification scheme is provide “a targeted and proportionate means to reduce risk” while maximising the “ability to keep open certain settings and events where transmission is a higher risk”. Further “the need to be vaccinated is expected to encourage the remaining sections of the eligible population yet to be vaccinated to take up the offer of the vaccine”.

We understand that the scheme as proposed will require those seeking entry to certain venues and settings to show that they have been fully vaccinated.

The Scottish Government proposals state that “certification will not be a requirement for public services or other settings that people have no option but to attend, such as retail.” They also indicate that there will be exceptions for premises being used for certain purposes, including worship, protest and certain business events that individuals are required to attend for work purposes. Further, the proposals indicate that the scheme will apply only to people attending the relevant premises/events as customers, not those working or performing at the premises/events.

The proposed scheme may engage a number of rights set out in the European Convention on Human Rights (ECHR), including the Article 8 right to private and family life, the Article 9 right of freedom of thought, belief and religion, the Article 10 right of freedom of expression and the Article 11 right of freedom of assembly and association. We recognise that the rights impacted are likely to be qualified, not absolute and their exercise needs to be balanced with the wider interests of public safety and the protection of individual and community health.

⁵ <https://committees.parliament.uk/publications/6264/documents/69158/default> at para 83

In guidance from the Council of Europe, “utmost caution” was advised in consideration of these measures because the human rights implications⁶. Mandatory vaccines have been considered by the European Court of Human Rights, for instance, this year in the *Vavříčka v. Czech Republic* case⁷, determining whether exclusion of unvaccinated children from nursery schools infringed human rights. The court held that it was a necessary and proportionate measure to restrict access, or to fine parents for non-compliance, considering the necessity and proportionality of these measures. The court did not consider a “critical approach to vaccination” to be sufficient to invoke the protection of Article 9, the right of freedom, thought and religion, on the basis that it did not “constitute a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9”.

However, whether human rights are infringed depends on the context of the measures being introduced. Restrictions on qualified rights require to be necessary in a democratic society to achieve a legitimate aim, and proportionate to that aim. In the case of the current proposals, we note that the Scottish Government has committed to publishing a full assessment of the evidence for certification in advance of the proposed scheme coming in to force. A clear evidence base is required to demonstrate the necessity of the proposed scheme. In respect of proportionality, we welcome the Scottish Government’s commitment that certification will not be a requirement for public services and other settings that people have no option but to attend. We also welcome the commitment to regular reviews of the proposed scheme. We note, however, that alternatives to vaccination such as a negative test result will not form part of the certification scheme. These could be considered less restrictive alternatives to vaccination and we would welcome further evidence and clarification as to the basis for their exclusion, with reference to the stated aims of the proposed scheme.

Equality and non-discrimination

We understand that the proposed scheme will include exemptions for:

- Under 18s (likely to be reduced to under 16s in due course)
- Participants in vaccine trials
- People unable to be vaccinated for medical reasons
- Employees at venues within the scope of the scheme

As above, we welcome the Scottish Government’s commitment that the proposed scheme will not apply to access to public services, and that it will not apply to those attending the relevant remises/event for the purposes of working or performing.

⁶ Council of Europe, *Protection of Human Rights and the “Vaccine Pass”*, 31 March 2021 (<https://rm.coe.int/protection-of-human-rights-and-the-vaccine-pass/1680a1fac4>)

⁷ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-209039"\]}](https://hudoc.echr.coe.int/eng#{)

Any scheme which restricts access to goods and services to those who have received the COVID vaccine may have a disproportionately negative impact on certain groups protected by the Equality Act 2010, such as pregnant women (who may have particular concerns regarding the vaccine during pregnancy), certain BAME groups, for whom the reported uptake levels are low, those who may have a religious or moral objection to vaccination, or those who may not be able to consent to vaccination due to lack of capacity. Further, it is possible (though not certain) that some ‘anti-vaccine’ beliefs could qualify as protected ‘beliefs’ (whether religious or otherwise) under the Equality Act 2010. The law is developing in this area, for instance, vegetarianism was not considered a protected belief in a recent employment case⁸, while ethical veganism was considered a protected belief⁹. Additionally, as noted above, the Vavříčka case held that a “critical stance to vaccination” did not engage Article 9. If a belief around vaccination were considered within scope of the Equality Act 2010, any scheme which requires proof of a COVID vaccine to access goods or services could be shown to adversely impact those holding such beliefs. Though not a protected characteristic under the Equality Act 2010, socio-economic status receives a measure of protection in Scotland under the Fairer Scotland Duty. Disparity in vaccine uptake levels among different socio-economic groups is also, therefore, a relevant consideration.

Whether implementation of a vaccination certification scheme with the aforementioned disproportionate impacts is compliant with the Equality Act 2010 will depend on whether such a scheme is a proportionate response to achieving a legitimate aim. The focus will likely be on the proportionality of the response, rather than the legitimacy of the aim, which should be more easily shown given the ongoing threat to public health. When considering proportionality, attention will need to be paid to a detailed equality impact assessment, the precise circumstances in which vaccine certification will be required, and a better understanding of the reasons for the lower levels of vaccine uptake among certain groups. We are not aware of any equality impact assessment having been published to date.

Accessibility

Any certification scheme should be fully accessible across all sectors of society. Potential barriers to accessing a certification scheme may arise in several ways, including from the imposition of fees or costs associated with certification, the location of vaccination centres, failure to provide policies and information in alternative languages or accessible formats, and reliance on technology such as apps. Consideration should be given to measures to mitigate these barriers and ensure accessibility.

Privacy and data protection

⁸ *Mr G Conisbee v Crossley Farms Ltd and others*: 3335357/2018 (https://assets.publishing.service.gov.uk/media/5d777ae2e5274a27ca983503/Mr_G_Conisbee_v_Crossley_Farms_Limited_Others-3335357-2018-OPH_Reserved_Judgment.pdf)

⁹ *Mr J Casamitjana Costa v The League Against Cruel Sports*: 3331129/2018 (https://www.bailii.org/uk/cases/UKET/2020/3331129_2018.html)

Any certification scheme is likely to require individuals to reveal health information, which is sensitive personal data under the Data Protection Act 2018. Consideration should be given to the privacy and data protection implications of such a scheme, including how information can be gathered, stored and processed in a manner that is ethical and compliant with human rights and data protection legislation. We are not aware of any data protection impact assessment having been published.

There are also security considerations. We welcome the Scottish Government's acknowledgment that security of the COVID-19 certificates generated is critical. The public and businesses must have confidence in the robustness of the scheme.

Clarity and definitions

We understand that the scheme will apply to:

- nightclubs and analogous venues
- sexual entertainment venues
- live events: indoors unseated 500+ in the audience
- live events: outdoors unseated 4,000+ in the audience
- all events: 10,000+ in the audience

There is a need for the proposed scheme to be based on clear definitions, in order to give certainty to both the sectors involved and to the public. We note, for example, that nightclubs were not previously defined in COVID regulations and that a definition will need to be developed. Until definitions are clarified, there is scope for uncertainty.

We understand that there are plans for the proposed scheme to be accompanied by comprehensive and sector-specific guidance, as well as a public information campaign to assist individuals and businesses in understanding their obligations.

Operational considerations

Whilst operational considerations will depend on the precise nature of the proposed scheme, key considerations may include:

- **Regulation-** who will be responsible for regulating any certification scheme, and how will that regulation be carried out and resourced? Will Local Authorities be required to inspect premises for compliance?
- **Resources-** it is likely that any certification scheme will create an additional administrative burden for individual businesses, and also for those administering vaccines. Businesses may also encounter additional costs arising from insurance and existing contractual arrangements. The Scottish Government's proposals indicate that additional staffing and infrastructure costs will be met by businesses. The potential for adverse economic impacts should be carefully considered and we

understand that the regulations implementing this change will be accompanied by a Business and Regulatory Impact Assessment.

- **Cross-border compatibility-** in order to ensure that any certification scheme is effective, consideration should be given to ensuring that certification is transferable within the UK, and also compatible with the requirements of other countries. Consideration should also be given to how the proposed scheme will accommodate those who have received one or both vaccines outside Scotland.
- **Timescales-** The proposed scheme has been announced at short notice. Businesses will require to put in place measures to comply with the scheme within a very short timescale. In some cases, tickets will already have been purchased for events which now fall within the proposed scheme. Customers may seek refunds, if they are unwilling or unable to obtain vaccine certification in advance of the event. Consideration should be given to how businesses can be supported to manage these impacts.

We understand and welcome that Scottish Government are working 'closely and at pace' with sectors to establish the operational details of the proposed scheme, and that the intention is to publish sector-specific detail in advance of implementation.

Monitoring and enforcement

The Scottish Government proposals indicate that Regulations will impose a legal obligation on the person responsible for operating the business or venue to 'take all reasonable measures' to restrict entry only to those fully vaccinated (unless exempt). Guidance on proportionate 'reasonable measures' will be published. The proposals also indicate that the need for offences with regard to the misuse of certificates by individuals will be considered.

A certification scheme will only be effective if it subject to effective monitoring and enforcement. Consideration should be given to how the scheme can be monitored in a way that is fair and non-discriminatory. Consideration should also be given to enforcement, and to criminal or civil penalties which may be attached to non-compliance by organisations and individuals if compliance with the scheme is mandatory in some sectors.



10 September 2021

Covid 19 Recovery Committee

Vaccination Certification

Written Evidence – Scottish Football’s Joint Response Group (“JRG”)

The JRG welcomes the opportunity to provide a written submission and evidence at the forthcoming session on vaccination certification.

We are very much aware and proud of the many ways in which Scottish football positively impacts society and are committed to continuing to use the power of football to assist Scottish Government in the collective effort to eradicate Covid-19.

Since the outbreak of the pandemic, the JRG has, in close consultation with Scottish Government, taken decisive action seeking to ensure the safety of all players, club staff and supporters. We have developed an excellent working relationship with Scottish Government Ministers, clinicians and officials, and appreciate the hugely challenging circumstances Scottish Government are working under.

We are supportive, in principle, of any measures which will help the ongoing efforts to combat the virus. However those measures need to be proportionate, practical and achievable within the industry sectors required to deliver them.

Our feedback on vaccination certification and its implications specifically for Scottish football are outlined below. Given the short timescale for response, we may wish to expand on these at the Committee session.

For context, we have had numerous meetings with civil servants recently at which we highlighted our practical concerns: indeed, we also questioned the purpose of the proposal to introduce vaccination certification, given that no evidence has been provided to us demonstrating an increased level of transmission of the virus at outdoor sporting events. None the less, we respect that Parliament has now voted on the matter and this written response now focuses on achieving solutions to the myriad practical difficulties, noting the imminent implementation period.

Legal Position

Clubs have sold thousands of season tickets and match tickets under terms and conditions which, at the time of sale, did not require vaccine certification to allow entry.

Terms and conditions now require to be fundamentally changed mid-season, potentially exposing our member clubs (and the Scottish FA) to thousands of applications for refunds. In the event of such refunds, will funding be provided by the Scottish Government as compensation?

Applicable Stadiums

Some stadiums in Scotland have a capacity of over 10,000 but the majority of the time do not exceed this figure.

Will the requirement be based on potential capacity, average attendees, or the expected capacity per match?

Some clubs have match attendances which will fluctuate at around 10,000 from match to match. This will cause confusion for spectators and lead to longer queuing times if checks are required at some matches and not others at the same venue.

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Operational Challenges

The impact that adding an additional check against every spectator to current entry processes cannot be underestimated.

There are three ways this can be implemented:

1. Technology is updated to include the ability to check vaccine passports at the point of ticket purchase. This is not expected to be achievable in the timeframe given the varying systems used by clubs and the unknown compatibility with the vaccine passport technology. Furthermore, season tickets and match tickets have already been purchased.
2. Technology is updated to include the ability to check vaccine passports at the turnstile. This is not expected to be achievable in the timeframe given the various unmanned entry systems used by clubs and the unknown compatibility with the vaccine passport technology.
3. An additional security check carried out by stewards prior to entry to the stadium turnstiles.

We are basing this submission on point 3 being the only conceivable option given the timescales and would note the following operational challenges.

- As across numerous sectors, the availability of the appropriate number of match day stewards to contend with current requirements is challenging. Adding an additional check will require a substantial increase in stewarding presence on site. In most cases this will require an additional security cordon which would mean a doubling of stewarding numbers. The number of available stewards has already been in decline due to concerns about Covid-19. The forthcoming COP26 conference will stretch numbers even further.
- In this context, the availability of the required number of appropriately trained stewards is highly unlikely.
- Stewards are already under pressure to ensure current checks are carried out. Adding additional responsibility to their role, particularly one which we can fully expect to lead to confrontation and challenge by spectators, may well lead to a further reduction in the number of stewards available at a time when more are required.
- Additional checks for every spectator will lead to increased entry time – perhaps as much as double.
- Stadiums have very limited footprint to be able to manage these queues effectively, which will lead to spectators gathering closer together for longer periods. This, we argue, is counter-productive and in fact increases the risk of transmission of the virus. Additional street closures will also likely be required in order to carry out an additional security check. This worked for Hampden Park during the Euros but with significant investment in temporary infrastructure and with several months of planning.
- It is accepted that football fans arrive at stadiums as near kick off as possible, irrespective of prior advice and communication. Additional checks will lead to surging/crushing as kick off approaches and potential public order issues as a result. The recent Scotland men's national team match against Moldova saw thousands of supporters outside of the stadium after kick-off due to issues with some supporters' ability to operate the new QR code system efficiently. This demonstrates the very real practical challenges that already exist before additional checks are taken into account.
- Match tickets do not contain personal information on the spectator. There is no way to cross check the vaccination passport to verify that it belongs to the ticket holder.
- An increase in stewarding presence will lead to an increase in club costs. Ticket prices were set when no such costs were required. Will there be additional financial support for clubs who will be required to meet this additional cost at a time when they are recovering from a sustained period without match day income?

Technological challenges

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It is our understanding that spectators will download their certificate via an app. Should there be a requirement for stewards to use technology to check vaccination passports as opposed to a visual check, we have the following questions:

- Will the system allow live checking of certificates and cross check against which certificates have previously been used for entry into a stadium? If not, there is a real chance that a single certificate will be used by multiple spectators.
- Should Wi-Fi be required at the stadium entry point, there is a significant potential for the loss of phone signal coverage due to network demand from large groups in and around stadia.
- What is the expectation in the event that the app doesn't function / fails to upload or goes down midway through an event?
- Different spectator demographics mean there are differing abilities to have/operate technology - kids, senior citizens and those with disabilities. What is the expected exemption process for those individuals?

Taking all of the challenges noted above into account, **it is the strong view of the JRG that a system which involves spot checking a selection of spectators who are attending a match is the only pragmatic and workable solution.** This would mirror the processes currently being used in the English Premier League, which features clubs with a completely different level of financial resource to our own members. Further, we would respectfully request that further time is afforded to event organisers to prepare for this very significant change to their operations.



The Scottish Licensed Trade Association would like to thank the committee for the opportunity to give evidence on this topic and note we remain committed to working with Scottish Government in a positive and constructive way in order to tackle the next phases of the pandemic. However we have a number of concerns around the implementation of vaccine passports.

Vaccination passports as currently proposed are highly likely to create serious and unresolvable issues with definition, unfair competition, market distortion, discrimination, financial impact on an already weakened sector, and an increased risk of disorder.

To address those topics in more detail, it would be helpful to start with the problem of Definition... And specifically, what is a nightclub?

Definition:

There are roughly 100 venues in Scotland that would identify themselves as 'nightclubs', premises that usually open only at night, trade until the maximum permitted hour, engage a DJ to play recorded music through a professional sound and light system, appeal mainly to younger demographics such as 18-24 year olds, and the primary activity for customers is that of dancing.

There are then another 300 to 400 premises that do not describe themselves as 'nightclubs', but have nearly identical elements, and which are direct competitors to nightclubs. These 'hybrid venues' will open during the day, serve food during the daytime and early evening, function as a cocktail bar during early evening, and then transition into a nightclub later in the evening, but also mainly appeal to younger demographics. Student Unions would also be a key competitor to nightclubs in many respects as well.

But if we further extend the definition of nightclub, as is currently being proposed by Scottish Government, to also include all premises open after midnight, with loud music, and where people may dance, this includes perhaps another 2000 or so premises ranging from the majority of pubs and bars, hotel function rooms, wedding venues, multi-purpose cultural spaces, grassroots and traditional music venues, and many more.

Market Distortion:

Given the issues that exist around definition, it then becomes the case that there will be significant issues of unfair competition and market distortion, and that these issues are unresolvable no matter where a line is drawn.

If you only include nightclubs, they will lose between 25% and 50% of their customers to hybrid venues. If you include hybrid venues, they will then lose those customers to later opening pubs and bars. If you include the pubs and bars that

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open after midnight and play music, they will then lose customers to pubs that close an hour earlier and do not feature music.

In short, there is no way to limit the application of this policy to just a section of hospitality, without creating significant competition and market distortion issues, to a degree that will make some premises unviable overnight and resulting in significant business failures.

If the current scheme goes through as planned, with the definition as proposed, then just 14 days from now people of all ages will find themselves unable to get into the majority of local pubs, bars and function rooms, as well as nightclubs, without a vaccine passport. It goes without saying that this reality has not been communicated by Scottish Government. And worse, people will be unable to sign up for a vaccine passport on the night, or provide any other form of covid status certification, such as LFT's, to gain entry.

Such an enormous disruption in the market on the first weekend of going live creates a substantial risk of frustration and disorder.

We would also note that where such schemes have been introduced elsewhere, any limited impact they may have had on vaccine uptake has depended on those schemes being almost universal in scope, where all members of society needed a vaccine passport to access a very wide range of premises types, from the smallest café or restaurant through museums and culture venues to large hospitality premises and events. And it was the universal nature of such schemes that appear most likely to have driven uptake, if any such increase was observed.

Discrimination:

This is a particularly problematic area for this policy.

In practical terms, and based on current vaccination data, this scheme will likely result in businesses being forced to refuse entry to some groups with protected characteristics at a rate 50% higher than other groups. It should go without saying that this is deeply problematic for our members on moral and ethical grounds, as well as of course on legal grounds.

Financial Impact:

The hospitality sector in general, and late night premises in particular, have been amongst the very worst affected businesses throughout the pandemic. They are mostly independent and locally owned small businesses, and the business owners have incurred large debts, typically 3 to 4 years worth of normal profits, just to survive Covid, keep their staff employed, and their rents or mortgages paid. To describe their current financial position as 'precarious' would be a significant understatement.

These businesses typically need to generate around 95% of 'normal' pre-covid turnover just to break even and keep the doors open. Any scheme which deprives them of between 25% and 50% of their key customers, and therefore income, will result in loss-making businesses which are unable to remain viable. Even if this scheme did result in higher rates of vaccine uptake, there is now not enough time

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before it's start for people to get vaccinated, so such a loss of customers is now inevitable.

Practical considerations:

Little thought appears to have been given to the logistical and practical problems that will be created.

Even if these checks added just 30 seconds to a Queue of 500 people, this would add 250 minutes to the admission time, resulting in many people not gaining admission until closing time.

If we were to just apply the scheme to the 100 or so nightclubs, we would be talking about needing to add the stewarding capacity of a Hampden Park or Ibrox every Friday and Saturday night just to administer the extra checks.

There are already serious shortages of staff and door stewards across Scotland, and this scheme will require significant increases in staffing, at a time when those staff simply do not exist. Even if we could somehow magic up thousands of new staff, there is simply not enough time to get them trained, background checked, and put through the SIA application process for a badge, which can take months.

To conclude:

The policy as outlined is almost certainly unworkable in practical terms, and it is simply impossible for our sector to implement it just 14 days from now.

It of particular frustration that many of these issues could have been addressed, had there been meaningful consultation between government and the sector at a much earlier stage of policy development, but unfortunately this has not happened.

Instead engagement has only occurred after the key policy criteria had been developed and announced without any input from sectoral experts – and including fundamental flaws that make successful implementation difficult if not impossible.

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