



- Amnesty urges the Scottish Government to provide more detail regarding their rationale for this policy. For example, if it is to increase vaccination uptake, is there any evidence it will achieve this aim?
- Blanket mandates for either vaccination or passports can have a discriminatory and disproportionate impact upon some groups, so Equality and Human Rights Impact Assessments must be carried out and published prior to legislation coming into force.
- In considering this policy we urge MSPs to address whether these proposals are **necessary, proportionate**, for a **legitimate** aims with **safeguards** including time limits.
- There are significant questions around the implementation of this policy which must be addressed, not least how it will be implemented during COP26, but also how it will affect those who have had one or both jabs in different health care systems – is there potential for a disproportionate impact on non-UK Nationals?

Background

Amnesty International has considered the potential human rights impacts of COVID certification and this briefing is limited to human rights risks and impacts; we do not evaluate or comment on factors that fall outside of our expertise as a non-medical organisation.

While a number of rights are engaged by both mass vaccination programmes and some - albeit currently limited - enforcement of vaccination under specific circumstances, international human rights law allows for certain rights to be limited under specific circumstances where it is provided by law, and it is necessary and proportionate to a legitimate aim, including for the protection of public health. This means that there are some limited exceptions that may allow states to impose vaccination requirements in particular instances.

Amnesty opposes *blanket* mandatory vaccination policies and by extension blanket policies requiring evidence of vaccination. COVID-19 immunisation plans must be carried out in a way that is consistent with the protection of human rights. While there are legitimate public health reasons to aim for as many people as possible to be vaccinated, blanket mandates on vaccination are contrary to human rights. First, generally states must guarantee that all individuals have the right to prior, free and informed consent for any medical procedure including vaccination. Second, blanket mandates do not take into account specific contexts and the circumstances faced by particular populations. As a result, blanket mandates can have a discriminatory and disproportionate impact upon some groups, such as communities who may not trust health authorities due to historical marginalisation and health workers who

may distrust health authorities, given their experience of being put at risk without adequate PPE and working conditions during the pandemic.

Human Rights Concerns

In this context States should apply the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR (Siracusa Principles), an expert interpretation of the ICCPR, which provide specific guidance on when and how restrictions to human rights may be permissible. In relation to public health, the Siracusa Principles note that these “measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured”. In addition, the Committee on Economic, Social and Cultural Rights’ Comment 14 recognises that states have a margin of discretion in assessing which measures are most suitable in their specific circumstances to protect public health and guarantee the right to health, keeping in mind that ensuring immunisation against major infectious diseases is a core obligation under the right to health.

With this in mind, states proposing or adopting vaccine requirements must demonstrate the following:

- a) **A requirement must pursue a specific and legitimate aim based on scientific evidence and in consultation with those groups most likely to be affected.** At this stage we have not seen published information from the Scottish Government on the evidence or rationale for Covid certification in the targeted form proposed. While there is clear evidence that infection rates are high and rising, Amnesty has not seen evidence for why this intervention in the circumstances proposed, will address infection rates or an Equalities and Human Rights Impact Assessment (EHRIA) on the potential disproportionate impacts on certain groups.

Children and Young People

We hope to see that vaccination certificates will only be required for adults aged 18+ in line with other Coronavirus legislation. There is the risk of discrimination against young people, particularly those ages 16 and 17 accessing entertainment venues. Aside from the fact that decision on vaccine roll-out to younger teenagers is yet to be made. Ensuring that certification is only for adults, and that the definition of an adult follows international standards, will help avoid these complications.

- b) **A requirement must be necessary, proportionate and reasonable to achieve this aim.** States must engage in a transparent decision-making process and present an evidence-based rationale that explains the goal of such a requirement and why this goal cannot be achieved with less restrictive measures. Again, we are unable to assess this proposal against these criteria without additional information.
- c) **A requirement must exist under a limited scope and timeframe for the purpose of the specific, legitimate aim.** A requirement’s timeframe should be reviewed as scientific evidence and understanding of this stage of the pandemic. An issue raised relating to other Coronavirus legislation is the need for “sunset” clauses on legislation so that the extraordinary powers given to governments and public authorities are not retained beyond the time of the pandemic. This is especially important with Covid certification given the profound implications of “vaccine passports” to wider debates around compulsory ID and privacy concerns around individual’s health and biometric data. Amnesty would be keen to see a sunset clause in this legislation which goes beyond review dates and commits the Scottish Government to ending the use or

requirement for vaccine certification at an appropriate point in the future.

- d) **A requirement must not have a discriminatory effect, including on groups that experience historical and structural discrimination, in line with international human rights law and standards.** States must show how they have mitigated against any risks of discrimination or increased marginalisation, especially where vaccine hesitancy is known to be higher among some minority groups or age groups. States should undertake a range of appropriate consultation, information and communication efforts with key communities. States must also ensure that no groups are excluded from vaccine access or on other grounds, such as nationality or immigration status; for example, vaccine appointments should be available outside of religious days and prayer times to ensure that they are accessible to all. There is a concern that those who have received one or both jabs in different health care systems have been unable to get a COVID certificate under current processes. There is therefore potential discrimination or disproportionate impacts on those who have received vaccination overseas or Non-UK Nationals who have recently entered the country.

COP26

Amnesty International has specific concerns about those attending COP26 – both the official Summit and the civil society spaces in the “Green Zone”. Although there is a vaccination programme and process for official delegates administered by the UK Government, there are many organisations and activists planning to come to Glasgow in November and we would like to hear assurances about whether vaccine certification will affect any of the in-person civil society events planned.

- e) **A requirement must be subject to periodic review, with an accessible independent process that regularly reviews the effectiveness of such measures vis-a-vis their initial purpose and to ensure that these are based on the most advanced, up-to-date, accepted and verifiable science available at the time.** Reviews should allow for opportunities to challenge and receive a remedy for any abusive application, including the potential harmful effect on other rights or disproportionate impacts on certain groups.
- f) **A requirement must contain accessible and sufficient precision to avoid framing that could lead to arbitrary health interventions or discrimination based on health status, expanded surveillance or risks to personal data security.** It is important to address the fact that these current proposals may be a first step and that extending circumstances that require vaccine certification could have huge disproportionate impacts on certain groups or could lead the way to mandatory ID or enforced disclosure of health information in other contexts such as workplaces. We have already seen extension to proposals in England that initially required the vaccination of health and social care staff but is now potentially being extended to include flu vaccination. Increasing the circumstances where certification is needed will inevitably increase the likelihood of discrimination based on health status, expanded surveillance or further risk personal data security. Thus safeguards and protections are needed before roll-out of this scheme and strict time limits to the use of “vaccine passports”.

Protection for data collection

Amnesty recognises that immunisation registries are necessary for the proper roll-out of vaccines and the importance of collecting data on the rate and reasons of vaccine refusal for public health purposes. However, any data collection must be for a defined and limited purpose and subject to data and privacy protections. Any collection of any identifying personal data collection without adequate protections and therefore could be repurposed for other purposes raises questions around the right to privacy, non-discrimination, freedom of movement among other rights. For example, proposals that collect personal and identifying data raise concerns that governments could use this information for mass surveillance systems, including for the purpose of law enforcement and immigration, or that companies could access the data for other purposes. For these reasons, Amnesty strongly opposes mandates to public health authorities to share with law enforcement and/or immigration officials medical data collected as part of immunisation programmes.

We are keen to see a data protection impact assessment, as there are concerns that in the first phase of roll-out that too much personal data is included in the vaccine certificate. We would like assurances that information such as the dates of vaccination and type of vaccination (i.e. whether the vaccine was produced by Pfizer, AstraZeneca etc.) is not included on certificates or apps needed to enter the premises currently proposed. Similar to the human rights issues surrounding vaccine requirements, according to the ICCPR and Siracusa Principles, restrictions may be imposed on human rights, if they are provided by law, and necessary to protect certain specified legitimate aims, one of which is public health. We hope to see a data impact assessment and specific protections to ensure that this information cannot be requested beyond the limited circumstances proposed e.g. that employers will not be able to start requesting this information.