

DOMESTIC COVID VACCINE CERTIFICATION – SEPTEMBER 2021 – BUSINESS AND REGULATORY IMPACT ASSESSMENT

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Title of Legislation

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021

Legislative Background

The Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2021 (the 'Regulations') are made under powers to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection, conferred on the Scottish Ministers by schedule 19 of the Coronavirus Act 2020. They amend the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (the 'Principal Regulations').

Introduction

This BRIA considers the impacts for businesses and consumers of laying new Regulations under the Coronavirus Act 2020 to mandate the domestic use of Covid Vaccine Certification in higher risk settings.

Policy proposal

Covid Vaccine Certification will require certain venues and settings to ensure that there is in operation a reasonable system for establishing that all people in the premises can demonstrate that they are fully vaccinated (possess Certification) (unless they fall into one of the exempt categories), and or to refuse access to or remove anyone who is neither fully vaccinated or exempt. Fully vaccinated means that a person has completed a full course of an authorised vaccine, with the final dose having been received 14 days before the date on which they seek to enter the late night premises or relevant event.

Initially, the scheme will not include a negative test result as an alternative to proof of vaccination, but this will be kept under review. At this stage, we do not consider that including testing results would be appropriate and, indeed, it could undermine one of the policy aims of the scheme: to increase vaccine uptake. Also, it is important at this stage to prioritise PCR lab capacity for Test and Protect purposes. While promoting regular lateral flow tests (LFD) tests is an extremely important aspect of our overall approach, further work would be required on an optimal approach to incorporating testing into Certification, including consideration of the appropriateness of self-testing in this context.

The scheme will apply in the following higher risk settings.

- late night premises with music, which serve alcohol after midnight and have a designated place for dancing for customers
- indoor events (unseated) planned for 500 or more people at any one time

- outdoor events (unseated) planned for 4,000 or more people at any one time
- any event planned for more than 10,000 people at any one time

The following will not qualify as events for the purposes of the scheme:

- a funeral, marriage ceremony, civil partnership registration, or a reception or gathering which relates to a funeral, marriage ceremony or civil partnership registration
- a mass participation event such as a marathon, triathlon or charity walk
- an event designated by the Scottish Ministers as a flagship event according to criteria, and in a list, published by the Scottish Ministers
- showing in a cinema
- a drive-in event
- an organised picket
- a public or street market
- an illuminated trail
- a work or business conference (except any peripheral reception or function outside the core hours of the conference, whether or not alcohol is served)
- a business or trade event which is not open to the public for leisure purposes
- communal religious worship
- an un-ticketed event held at an outdoor public place with no fixed entry points

Trade events attended by members of the public for leisure purposes, for example wedding fairs and craft fairs will not be excepted. The people working at the event will be excepted (such as exhibitors and venue staff).

Ministers have been clear that Certification will not be a requirement for public services or other settings that many people have no option but to attend such as retail, public transport, health services and education.

The following people will be exempt:

- Under 18s
- People who cannot be vaccinated for medical reasons
- People taking part (or who have taken part) in vaccine trials
- The person responsible for the premises
- Workers and volunteers at the venue or event
- Emergency services responders and regulators carrying out their work

The regulations will require the persons responsible for a late night premises or premises where a relevant event takes place to ensure there is a reasonable system in operation for checking that people seeking to enter the premises are fully vaccinated or are exempt, and to have in place a compliance plan for this system. As outlined below enforcement of the regulations commences on 18 October and failure to comply with this will be criminal offence.

The scheme will come into force on 1 October 2021 (from 5AM). The requirement on persons responsible for a late night premises or premises where a relevant event is taking place to ensure there is a reasonable system in operation for checking Certification and to have a compliance plan will not be enforceable until 18 October. Ministers must review all restrictions under the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (which

include Certification) at least every 3 weeks to assess whether any requirement in the regulations is still necessary to prevent, protect against or provide a public health response to the incidence or spread of infection in Scotland. We will continue to assess whether any less intrusive measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned; if so, the policy will be immediately reviewed.

Sectoral Guidance is published on the Scottish Government website [here](#). Public Guidance will be published on the Scottish Government website.

NHS Scotland Covid App and Paper Certificate

On 30 September we will launch the NHS Scotland Covid Status App, which contains 2 unique QR codes, with the first detailing a person's name, date of birth and first vaccination, and the second just holding data on their 2nd vaccination. Further information, such as testing results or recovery status, will be added in a future release of the app. The Privacy Notice is already online and can be found on NHS Inform: [Personal information we process](#), [How we use your data](#), [Your Rights](#). The Easy Read Version can be found [here](#). This product has been designed for use for international travel and so it is necessary to include these details to meet EU standards. This App can be used to demonstrate vaccine status in the settings in scope.

A domestic section of the App is expected to launch in mid-October. This will simply show the person's name and whether they have Certification, demonstrated as either a green tick or red cross through the use of the NHS Scotland Covid Check App.

For those who do not have digital access or would prefer a paper copy, a record of vaccination can be requested by phoning the Covid-19 Status Helpline on 0808 196 8565. The paper record of vaccination will then be posted to the address that is held on the National Vaccination Service System (NVSS).

When registering an account on the App the user needs to verify their identity. This is for privacy protection, to ensure that the user's identity has been verified before they are given access to medical records.

The App will use biometric identification software at the set up stage. This means users will be asked to scan a photo of their ID – for example a passport or driving license – and then take a live photo or video of themselves. The software will then use their live photo to compare likeness with the photo in their ID and confirm their identity. There will be manual verification for the small number of cases which fail the automatic process. For the limited number of cases where a person's identity cannot be verified in the App or through manual intervention, the individual can call the Covid-19 Status Helpline, or use NHS Inform to request a paper Certificate, which will be posted to them.

Individuals who are medically exempt can apply for a paper Certificate through the NHS Inform website. This will be a paper Certificate and will have enhanced security features. Medical exemptions cannot be displayed on the international App due to EU specification but may be included in a future release on the domestic version of the App.

All clinical trial participants have received a letter from their Principal Investigator which can be used for proof of their trial status and to access a regulated setting. All Clinical Trial Participants

have already received a secure Certificate indicating their trial status. This enables people to gain access to domestic venues where Certification is required.

Vaccinated children as outlined above are exempt from certification and are therefore not required to provide a certificate as they are exempt by virtue of their age.

While children are exempt from the requirement to prove Certification for domestic purposes, 12-17 year olds who have been vaccinated may choose to access their record of vaccination by downloading a PDF via NHS Inform or requesting a paper Certificate by calling the Covid-19 Status Helpline. The Privacy Notice is already online and can be found on NHS Inform: [Personal information we process](#), [How we use your data](#), [Your Rights](#). The Easy Read Version can be found [here](#).

To support accessibility, we will translate the Certificate into different languages and developing an Easy Read, braille and large print version. It will also be available in audio format and British Sign Language.

For more information on Covid Vaccine Certification, see the Scottish Government website [here](#).

Policy Objectives

In line with our strategic intent to '*suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future*', the policy objectives of Covid Vaccine Certification are to:

- Reduce the risk of transmission of Coronavirus
- Reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service
- Allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures
- Increase vaccine uptake

An [evidence paper](#) summarising the range of evidence available on Vaccine Certification schemes has been published alongside the impact assessments. Consistent with our approach throughout the pandemic, the paper adopts a four harms approach covering the direct health harms of Covid-19, the indirect health harms, the social and the economic harms. Evidence is drawn from clinical and scientific literature, public opinion and international experience.

Public Health Rationale for Government intervention

Although daily Covid case numbers are dropping in Scotland, case numbers remain too high, and we still have a large susceptible population which could lead to cases rising again. In addition, the number of people in hospital and ICU continues to increase. The winter period ahead will pose significant challenges of increased transmission and related pressure on the National Health Service (this impact assessment should be considered alongside the latest [State of the Epidemic report](#)). We remain of the view that action is therefore needed across all sectors to ensure adherence to baseline measures. Drawing on the evidence so far available, we consider that Vaccine Certification has a vital role to play as one such measure.

While no vaccine is 100% effective at preventing infection, disease and transmission, and they do not completely break the link between a high volume of positive cases and serious pressure on healthcare services, they are our best route out of the pandemic. Vaccines help prevent transmission of the virus, as vaccinated people are less likely to become infected and ill than unvaccinated people (and only infected people can transmit the virus). The UK Vaccine Effectiveness Expert Panel (VEEP) is a group of scientific and analytical specialists from academia and government in the UK who provide a consensus view on vaccine effectiveness, split by variant, vaccine and dose. They have published estimates for vaccine effectiveness based on an assessment of the evidence at the time of writing and as new evidence or data emerges, SAGE will update its advice. A summary published on 27 August can be found [here](#). More analysis can be found in a number of large studies including EAVE-II (Early Pandemic Evaluation and Enhanced Surveillance of COVID-19) in Scotland¹, Real-time Assessment of Community Transmission (REACT-1) in England² and the Office for National Statistics (ONS) COVID-19 Infection Survey ONS study.³

Therefore, we have strong evidence that vaccines are effective at preventing disease, hospitalisations and deaths: in the four weeks from 21 August 2021 to 17 September 2021, Covid-19 cases increased and surpassed the peak that was seen in early July. Although case rates are now declining, the rate of increase in cases then was less among fully vaccinated individuals: As of 29 September, 70.0% of the population were fully vaccinated, and in the week 18-24 September 46.9% of positive cases were in unvaccinated individuals.⁴ However, effectiveness decreases over time for both Pfizer-BioNTech and Oxford-AstraZeneca vaccines due to waning immunity.⁵ Higher risk settings tend to have the following characteristics: close proximity with people from other households; settings where individuals stay for prolonged periods of time; high frequency of contacts; confined shared environments, and poor ventilation.^{6,7} Therefore, by restricting access in these settings to customers who are fully vaccinated, these are less likely to be settings of infection, and it is less likely that infections within them will lead to illness. Consequently, we can reduce the risk of transmission of the virus and help reduce pressure on health services while also allowing settings to operate as an alternative to closure or more restrictive measures. As such, we consider Certification, as part of a package of measures such as improved ventilation, to be a necessary and proportionate public health measure.

For more information on the Covid Vaccine Certification scheme see the Scottish Government website [here](#).

Consultation

We have not undertaken any public consultation on these measures. However, Scottish Government Ministers and officials have engaged with a wide range of sector representatives at 3 roundtables and over 14 sectors and stakeholders (Annex A) from a range of specialisms,

¹ [EAVE II | The University of Edinburgh](#)

² [The REACT 1 programme | Faculty of Medicine | Imperial College London](#)

³ Office for National Statistics (24 September 2021). [Coronavirus \(COVID-19\) Infection Survey, UK](#)

⁴ Public Health Scotland (22 September 2021). [PHS COVID-19 Statistical Report](#)

⁵ Public Health England (9 September 2021). [Duration of protection of COVID-19 vaccines against clinical disease](#).

⁶ WHO (13 December 2020). Coronavirus disease (COVID-19): How is it transmitted?

⁷ SAGE. [Insights on transmission of COVID-19 with a focus on the hospitality, retail and leisure sector](#).

including events, music, sport, hospitality and the night-time economy, as well as trade unions and the legal profession. They have represented the views of businesses and their diverse feedback has been considered and informed this BRIA.

Through this engagement a number of key themes emerged.

Appetite for Certification

Generally business opinion is quite negative, both about the scheme in principle and how it is being introduced. However, unions are more positive. The Broadcasting, Entertainment, Communications and Theatre Union (BECTU) stated that their members are keen for the scheme to be in operation in their workplaces, even in venues which are not currently in scope of the scheme. Their members want to be safe at work and see this measure as one way for that to happen.

The views of football fans were shared by the Scottish Football Supporters Association, noting the key findings of a recent survey of 900 fans on the proposed introduction of Certification for stadiums hosting over 10,000 attendees:

- 51.6 % are currently in favour of Certification proposals if it allows them to access football.
- 43.3% oppose the proposals (5.2% are undecided).
- However, when asked the question of ‘Vaccine Passports vs crowd limits’, 68.7% said they would back the proposal if it increased/maintained the crowd capacity. Fans are pragmatic and think Certification is the lesser of the two evils.
- 61.2% say they would feel far safer attending a fixture if all fans are vaccinated against 20% who do not feel that way and 20% uncertain.
- 81.7% feel that if Certification has to be implemented then the cost of the implementation should be met by the Government.

Direct costs to ensure compliance and enforcement

There are concerns about having enough staff to implement the new scheme, given that the affected sectors are already facing a shortage of qualified stewards and front of house staff in general, as well as concerns for staff safety from both Covid and potentially dissatisfied customers/public order issues. One Scottish Professional Football League club advised SG officials that despite seeking around 450 stewards to ensure adequate staffing for home games, they are struggling to get 350. Hospitality sectors have highlighted that many businesses affected will not normally have door staff and therefore this requires significant recruitment and there is evidence that there is not a sufficient supply of staff for this.

Due to this shortage of personnel, businesses have concerns about having to check all customers. They expressed concerns that this could cause unacceptable delays for customers to enter venues, potentially leading to crowd compression and therefore greater risk of transmission. If a sampling approach (“spot-checking”) was acceptable, they would want to know what kinds of samples are appropriate. There was a strong preference for “spot-checking” from larger venues, but also smaller ones, such as late night venues with music, alcohol and dancing, which have proportionately fewer staff available to check customers’ vaccination status. The percentages have to be balanced against the aims of the scheme from

a public health perspective, as a low amount of spot checking may severely reduce the effectiveness of Certification in reducing transmission risk.

Costs are a concern mentioned by many: costs of new scanners, as stakeholders consider that it would not be appropriate for staff to use personal phones to scan QR codes, additional staffing costs, and other infrastructure. Upon further information being provided about the technical infrastructure, the costs infrastructure concern reduced, but the staffing issue remained live. It has been suggested that requiring QR code checks at our largest sports stadia would require about £35k in mobile technology investment as stewards are not allowed to carry their own devices while on duty.

The impact on business profitability has been raised consistently, with many sectors highlighting that their members are already running with high levels of debt (between £95-£150k on average) due to closures during the pandemic. Therefore, a reduction in customers or an interruption to normal trading will put some business premises in a more difficult financial position.

Businesses are also concerned about the potential increase in the cost of their insurance, if they are unable to staff doors with qualified door staff, which for some may be a condition of their insurance cover. The hospitality industry reported that it can take up to 3 months to complete all training and checks for newly trained and accredited door staff.

Complexity and justification of the policy

There are concerns about the time it will take to properly understand the final scheme, acquire the right equipment, and train staff to fully implement these new measures.

There is generally a strong desire for more information about how exactly this scheme would work on the ground, and to provide more information about the decision-making process on, for example, why producing a negative test result is not allowed as an alternative measure.

There is a desire to understand the purpose of introducing workplace testing better – wanting to know what the goals of the programme are. It has been made clear that the primary aim was to reduce the risk of transmission of COVID-19, and the secondary aim was to boost vaccination rates across the population. The Night Time Industries Association questioned the public health benefit of Certification.⁸

Scope of settings

There has been some concern about which businesses would and would not be covered by the scheme, with the possibility of market distortion caused by customers going to venues that did not require Certification a live concern. However, it was also raised that customers might prefer to go to a venue that enforced Certification to one that did not. The definition of [late night venues with music, alcohol and dancing](#), covering all venues with similar activity, has been used to avoid any impact falling on a small set of venues. Instead, it aims to provide a level playing field for late night venues.

⁸ Night Time Industries Association (2021), Covid Status Certification: NTIA Scotland Briefing Paper

Businesses have suggested a range of ways in which the definition could be adjusted, each of which would affect the group of businesses in scope for Certification. Businesses recognised, however, that wherever the line is drawn, the final definition would likely include some businesses that did not expect to be in scope at the time of the original announcement.

Changes to Terms & Conditions

Businesses that had already sold tickets are concerned about how to deal with changes to terms and conditions and what the legal position is regarding ticket refunds.

Legal process and Equality issues

The legal profession is concerned about what they see as lack of scrutiny of the regulations before coming into law, and also stated that an equality impact assessment would be necessary for this measure not to be deemed discriminatory, as well as a data protection impact assessment. The night time sector has also raised concerns that they may face legal challenge on equality grounds from any customers who they are required to refuse entry.

Options

Options Considered

1. Do not introduce vaccine certification – continue with existing baseline restrictions including in higher risk settings
2. Introduce voluntary, non-regulatory certification in higher risk settings
3. Introduce mandatory vaccine certification in higher risk settings

Options Description

1. Do not introduce vaccine certification – continue with existing baseline restrictions including in higher risk settings

This option would entail continuation of existing measures, such as:

- Face coverings
- Check-in Scotland app
- Track and trace
- Capacity limits retained along with associated exemption process

2. Introduce voluntary, non-regulatory certification in higher-risk settings

This option would feature:

- Voluntary certification at the request of venue/event of customers
- Not in regulations
- Implementation supported through Scottish Government Guidance
- No formal enforcement to ensure compliance

3. Introduce mandatory vaccine certification in higher risk settings and remove capacity limits from regulations.

This option would feature:

- Certification for access to specified settings required for entry
- Mandated in Regulations
- Public use of paper vaccine certification or digital NHS Scotland Covid App NHS
- Event/venue use of Verifier App – NHS Scotland Covid Check app to verify QR code
- Implementation supported through Scottish Government Guidance

Sectors and Groups Affected

These Regulations would affect:

- Late night venues with music alcohol and dancing;
- Indoor cultural performance venues associated with live events, particularly larger venues that stage unseated performances;
- Outdoor venues associated with large cultural or sporting gatherings, such as larger sports stadia and race courses;
- Conference centres, in instances where staging large scale seated or unseated live events, trade fairs open to the public, markets or exhibitions;
- Businesses involved in the organization and staging of live events, such as performers, event promoters, staging and production businesses, associated supply chain businesses;
- Business events that entail a 'peripheral' reception or function outside of the core hours of the event, which would not be excepted should they meet the criteria for certification. Business event professionals note that the majority of high value business events in Scotland encompass receptions that would be in scope (500+);
- Ancillary businesses dependent on live events (e.g. food and drink sales, merchandising);
- Prospective attendees at live events;
- Local Authorities, as they would be required to undertake monitoring and enforcement activities arising from regulations.

Assessment of Options

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

Option 1: Do not introduce vaccine certification – where baseline measures are in place, we continue with them including in higher risk settings

This option would represent continuation of existing measures in higher risk settings, but no new or additional requirements regarding certification, either on a voluntary or mandated basis. However, the state of the epidemic may require further more restrictive measures and even closure.

Costs

This option is an alternative to introducing vaccine certification, and is not likely to have any immediate financial implications beyond those associated with continuation of baseline mitigation measures.

Our Strategic Framework provides the context and principles for our response to COVID-19 and our strategic intent which is to suppress the virus to a level consistent with alleviating its harms while we recover and rebuild for a better future. Previous restrictions on the activities associated with these higher risk settings have involved reductions in crowd capacities, or temporary closure of premises.⁹ As well as the economic costs, closures and restrictions have impacted on people's overall health and wellbeing. A limited, targeted system of certification is a proportionate alternative to the risk of more stringent measures and further periods of closure for higher risk settings.

Covid-19, and previous restrictions introduced to control the virus, have had a substantial impact on these sectors. Estimates of direct impacts on GDP are not available from official statistics for nightclubs and live events venues as a standalone part of the economy. Rather, they are contained within the following sections of the economy who have experienced significant impacts. For instance, during the first lockdown output fell significantly over the month of April 2020: by 77.0% in Accommodation and Food Services and by 42.6% in Arts, Culture and Recreation sector. When further restrictions were imposed on Accommodation and Food Services in 2021, output fell 30.5% over the month of January 2021. These figures highlight the potential order of magnitude of loss in economic output that could arise from closure.¹⁰

Relative impacts of the pandemic on sector viability have varied between sectors and business size bands, with sectors more seriously affected by restrictions for longer periods enduring longer periods of lack of viability (e.g. Accommodation & Food Services, Arts, and Entertainment & Recreation). Over the course of the pandemic, businesses in Accommodation & Food and Arts, Entertainment & Recreation sectors have consistently been more likely to report decreased turnover than businesses across all sectors – 44.0% and 56.1% respectively, compared to 27.1% of businesses across all sectors in the period 23 Aug to 5 Sept 2021. In this latest period, 11.6% of businesses in the Accommodation & Food Services sector, and 17.9% of businesses in the Arts, Entertainment & Recreation sectors reported their turnover had decreased by more than 50% compared to what would normally be expected, compared to 4.4% of businesses across all sectors.¹¹

The sustained losses incurred by many businesses in the worst affected sectors will likely have a significant impact on their resilience. It follows that borrowing will have increased, and cash reserves will have been depleted for many businesses. For example, the Night Time Industry Association have suggested that the 'typical premises' in the night time industry sector has taken on around £150,000 in debt as a result of Covid-19.¹² Even as profitability approaches pre-Covid levels in the worst affected sectors, businesses in these sectors could be vulnerable to any further restrictions, particularly as key support packages such as the Coronavirus Job

⁹ Previous restrictions have been subject to separate BRIA. For instance, see: [Nightclubs \(p54-71\): The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](#); [Stadia and Events \(p90-118\): The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](#).

¹⁰ See <https://www.gov.scot/publications/monthly-gdp-july-2021/>

¹¹ [BICS weighted Scotland estimates: data to wave 38 - gov.scot \(www.gov.scot\)](#)

¹² Night Time Industries Association (2021), Covid Status Certification: NTIA Scotland Briefing Paper

Retention Scheme are withdrawn. It should be noted that, unlike the first and subsequent lockdowns, the support schemes in place in future will be different with, for example, the furlough scheme ending in September 2021. This would exacerbate the economic impact of closure for businesses in these sectors.

The risk of additional restrictions, similar to those existing prior to August 2021, being considered or re-imposed is considered greater under this option.

Benefits

There would be little additional public health benefit in the adoption of Option 1, over and above that arising from continued use of baseline measures in higher risk settings.

Under this option, affected businesses would continue to trade under current conditions, and would not be required to adhere to any further restrictions. They would also not incur any additional business infrastructure and staffing costs with regard to Certification.

Option 2: Introduce voluntary, non-regulatory, vaccine certification in higher risk settings

Under this option, it would be at the discretion of individual businesses and events venues to choose whether to require evidence of vaccination from customers at point of attendance. Guidance would be provided by the Scottish Government and there would be no formal monitoring of compliance or enforcement.

Costs

Depending on the choices made by venues and customers, this option could impact trade and revenue for participating venues either positively or negatively, adding to pressures on individual businesses' viability.

If businesses chose to implement Covid Vaccine Certification, they would potentially incur direct financial costs arising from ensuring compliance, such as hiring and training additional staff to check certification status and installation of IT hardware and software to allow staff to check customers' vaccine certification. The extent of these costs would likely vary across businesses, depending on the scope to integrate them into existing staff functions, use existing IT infrastructure, or physical infrastructure. Additional costs would be incurred by participating businesses, not by those electing not to take part.

As the proportion of the population who are vaccinated increases, businesses choosing to implement Covid Vaccine Certification could potentially be perceived by some customers as less risky environments. They could also conversely lose some customer footfall, as people without certification would be refused entry, others may be reluctant to attend if non-certificated friends were unable to attend, or if entry delays were onerous.

Non-participating businesses could experience reputational impacts, with perceptions of being 'riskier' venues. This could generate loss of trade and revenue.

Voluntary use of certification by businesses could lead to a rise in customer footfall to non-certified venues and events which could subsequently increase the risk within these settings.

Benefits

This option would have more public health benefit than Option 1, with some positive impact on reducing the risk of transmission in higher risk settings. However, this benefit would be limited for two reasons. First, it would be unlikely that all relevant businesses would choose to implement certification. Secondly, even where business chose to implement certification there would be no means of ensuring that their implementation was effective since, by definition, there would be no enforcement.

Participating businesses may also receive reputational benefit from putting controls in place, and being perceived as less-risky environments. They may also receive additional footfall and revenues as a result.

Option 3: Introduce mandatory vaccine certification in higher risk settings and remove capacity limits from regulations

Costs

Under this option, those without vaccine certification would be unable to gain entry to late night venues with music, alcohol and dancing, or specified indoor and outdoor live events.

Costs from this option will potentially arise from reductions in footfall and attendance at venues and events covered by the regulations, cancellation of events and refunds to customers, associated cash-flow impacts and additional direct costs incurred by affected businesses to ensure compliance with regulations. Conversely, as the percentage of the population who are vaccinated increases, implementing certification could potentially be perceived by some customers as creating less risky environments. The removal of capacity limits and exemptions may free up resource for event planners and local authorities which can be diverted to implementation of certification, thereby reducing cost effect.

A limited, targeted system of certification is a proportionate alternative to the risk of more stringent measures and further periods of closure for higher risk settings which would have significant financial implications for the businesses affected. The policy would be in force from 5am on Friday 1 October 2021, although would not be subject to enforcement until 18 October 2021. We will allow a period of slightly more than two weeks – until 18 October – before a business would face any enforcement action for non-compliance with the requirement to operate a reasonable system and maintain a compliance plan. This period – effectively a grace period – will allow businesses to test, adapt and build confidence in the practical arrangements they will have to introduce to comply with the scheme. The policy will be subject to three-weekly reviews.

Scottish Ministers will also continue to assess whether any less intrusive alternative measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned. The current default position would be that the certification provisions, along with the rest of the Principal Regulations would be due to expire on **28 February 2022**.

- *Loss of revenue through reductions in footfall and attendance*

Businesses subject to certification may experience a reduction in customer footfall and attendance, as those without certification would be refused entry. Customers may view certification as a barrier, especially if groups socializing together are divided into certified and non-certified. This could lead to a reluctance to visit venues and attend events where Certification is required, opting to visit venues and events which do not require it. However, those affected may also choose to stay at home. Taken together, these may result in loss of direct footfall for businesses.

The anticipation of delays in entry and experience of the customers entering venues and events where Certification is required may influence choice, opting for less onerous options. Loss of trade and revenue for participating venues could heighten pressures on individual businesses' viability.

The extent to which unvaccinated groups will reduce footfall in nightclubs and adult entertainment venues, and attendance at live events, is currently unclear. Current vaccination uptake data (see Table 1 below) indicates that notable minorities within younger age groups may not have taken up both vaccine doses by the point at which certification would be required under this option.

	Taken Up First Dose by 23rd July		Taken Up First Dose by 26 th September		Received Second Dose by 26 th September	
	%	Total (nearest 000's)	%	Total (nearest 000's)	%	Total (nearest 000's)
Aged 18-29	70.4%	587.5	76.4%	637.2	62.9%	524.7
Aged 30-39	80.1%	584.5	83.4%	608.7	74.6%	544.3
Aged 40-49	90.0%	607.1	91.5%	617.0	86.3%	581.9
All aged 18+	89.8%	3,987.6	91.8%	4,076.8	86.0%	3,818.6

Table 1. Vaccination Uptake, by Selected Age Group. Source: PHS Dashboard.

Under the current requirement for a minimum of 8 weeks between individuals receiving their first and second doses of vaccine, current data suggests that around 10.2% of the overall population aged 18+ may not have taken up both doses of vaccine by the fortnight before 1st October. Among younger age groups, this proportion may increase to 29.6% of those aged 18-29 and 19.9% of those aged 30-39. Uptake rates for 26th September suggest that, by the week beginning 6th December, around 8.2% of the overall population aged 18+, 23.6% of those aged 18-29 and 16.6% of those aged 30-39 may not be fully vaccinated, and with the further days required by certification having passed.

There is some pre-pandemic evidence to suggest that attendance at live music events varies by age. For instance, in 2019, 37 per cent of adults were estimated to have attended a live music event in the preceding 12 months. This rate was higher among 16-24 year olds (50 per cent), 25-34 year olds (45 per cent), and 35-44 year olds (39 per cent).¹³ However, there is limited data available on the demographic characteristics of those that attend late night venues

¹³ Scottish Government (2020), Scottish Household Survey 2019: Culture and Heritage Report, Table 3.3. [Scottish household survey 2019: culture and heritage - report - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/publications/2020/04/20200401_schs2019_culture_and_heritage_report.pdf)

with alcohol, dancing and music, and live events of sufficient scale and characteristics to fall within the requirements of this option.

It is also currently unclear whether those who attend late night venues with alcohol, dancing and music, and live events have greater or lesser likelihood of having been vaccinated than those in younger age profiles overall.

The data set out in Table 1 above may suggest that individual businesses with large shares of those aged 18-29 in their customer base could be initially exposed to loss of footfall and revenue under this option due to their customers being insufficiently vaccinated to gain certification. Substantial loss of footfall over a sustained period of time may present challenges for individual businesses' financial positions. The scale of potential exposure would be expected to diminish over time, as larger numbers of people become vaccinated. The duration of impact would be influenced by uptake among younger groups, and preferences for alternatives.

In addition, industry stakeholders have highlighted that there may be negative impacts arising from groups of customers choosing to avoid venues where certification is required in response to some of their members not having appropriate vaccination certification. There may also be impacts on footfall at individual venues should the process of checking certification add to the time taken to enter venues. However, there may also be improved footfall and associated revenues from increased perception of venues requiring certification as being of lower risk than alternatives.

- *Loss of revenue through cancellation of events and customer requested refunds*

Live events businesses, including concerts and trade fairs open to the public, may also experience additional impacts under this option if unvaccinated customers who had bought tickets for events before the commencement of this option are subsequently unable to attend. This may generate demand for refunds or transferability of tickets leading to additional cash-flow pressures for event organisers who may not be protected in terms and conditions, as it was not a stated condition of entry.

Customer cancellation costs may partly come from overseas visitors who have difficulties proving their vaccination status. The Verifier app for business has been developed to be able to read QR codes from the other UK nations as well as from any individual using the EU Digital Covid Certificate scheme. However, there is still a risk of lost business at larger events that have a significant international audience beyond the EU. For example, Edinburgh's Hogmanay in 2019 had visitors from 58 different countries.

If live events businesses are unable to ensure that their show is financially secure in advance - through guaranteed ticket sales - they may cancel events. Equally, if ticket sales are at risk, there could be a subsequent impact on the ability of organisers to secure exhibitors/performers and sponsors of events – a major source of revenue – and similarly may cancel events due to a lack of viability. Cancellation of events may also arise if the direct costs of ensuring compliance, such as additional stewarding, threaten the viability of the event. Cancellation of events would impact on a number of sectors, including the tourism sector.

- *Direct costs to ensure compliance and enforcement*

The NHS Scotland Covid App will be provided for free, the accompanying [Guidance](#) on how to implement within businesses now being live on the Scottish Government website. Under this option, businesses could incur direct financial costs to ensure compliance. These could include one-off costs associated with IT hardware to allow staff to check customers' vaccine certification, on-going costs such as hiring and paying additional staff to check certification status, and recurring costs associated with staff training.

The extent of these costs would likely vary across businesses, depending on the scope to integrate them into existing staff functions, use existing IT infrastructure, or physical infrastructure. These costs may be higher for businesses which have not delivered a similar function historically, such as venues which do not charge for entry and have previously not had a need for door staff but may now require some to check certification at the point of entry.

Staff costs represent a large component of the overall running costs of businesses in some of these sectors. For example, in the Accommodation and Food Services sector overall, labour costs are estimated to account for 42% of total costs at a sectoral level, compared to 25% across all sectors, while in Arts, Culture and Entertainment sector labour costs are estimated account for around 18% of total costs.¹⁴

Overall, impacts on staff costs would likely vary across businesses depending on several factors, particularly whether the regulations' requirements are accommodated within existing staff responsibilities or require additional staff. If additional staff is required, costs would be influenced by factors such as numbers of staff required, and number of hours required each week. It is not currently possible to give an estimate of the overall magnitude of additional staff costs for the reasons set out above. However, hourly and weekly gross wage costs for occupational groups that would be affected by the regulations are set out in Table 2 below. It should be noted that these statistics do not include non-wage labour costs, such as Employers' NIC and pension contributions:

	Mean Gross Hourly Pay, £			Mean Gross Weekly Pay, £		
	All	Part-Time	Full-Time	All	Part-Time	Full-Time
Security Guards & Related Occupations (SOC 9231)	£11.09	£12.50	£10.91	£409.30	£216.20	£467.60
Bar Staff (SOC 9265)	£8.37	£8.38	£8.36	£151.90	£123.30	£303.40

Table 2. Gross Mean Hourly and Weekly Pay, Selected Occupations, 2019. Source: ONS, Annual Survey of Hours and Earnings 2019, Tables 15.1a, 15.5a

It is noted that there is a widely reported difficulty in securing sufficient numbers of stewarding staff at present, due to labour shortages, which could be exacerbated during COP26. There is also evidence of continued strong growth in vacancies in hospitality staff.¹⁵ Both of these could

¹⁴ Scottish Annual Business Survey, Scottish Annual Business Statistics (SABS) 2018, [Scottish Annual Business Statistics 2018 - gov.scot \(www.gov.scot\)](#). Note that SABS excludes financial sector & parts of agriculture and the public sector.

¹⁵ For instance, the RBS Markit Report on Jobs, September 2021 reported continued strong growth in August in temporary and permanent Hotel & Catering staff vacancies in Scotland, albeit after unprecedented declines in spring 2020.

create challenges for affected businesses in recruitment of numbers of staff required as a result of regulations. However, it is possible that more people could be encouraged to return to the industry if they perceived the venues workplace as less risky.

The magnitude of these costs will be closely linked to the level of enforcement expected from businesses, the footprint of venues and flow of customers at venues and events. Regulations will impose a legal requirement on the person operating the business or premises to implement a reasonable system to ensure that only those fully vaccinated or exempt are admitted, with guidance used to set out what reasonable measures may be in different settings. In order to achieve our aims, the Scottish Government has proposed that a reasonable system will include enabling businesses to check vaccine certificates initially either visually or by scanning the QR code, with a view that the number being scanned increased over time. For late night venues, and for smaller events, the expectation would be that this would transition over the first month of operation to a 100% check on entry, given the option for a visual check. For large events, the Scottish Government has proposed that what is reasonable should be assessed by business on a venue by venue basis, after taking account of the Scottish Government's guidance.

It has been indicated by businesses that a 10-20% visual check at sporting events may be achieved with minimal additional resource. The Scottish Football's Covid-19 Joint Response Group estimates that the cost of creating and staffing an outer cordon in sports stadia could cost upwards of £5,000 per game, before technological infrastructure costs.

The technology investment may be a one-off expenditure for businesses, with requirements to issue staff with dedicated hardware to read certification such as mobile phones or tablets.

It has been suggested in engagement with sports stakeholders that providing scanning technology to stewarding staff to check QR codes, if it were a requirement, could cost in the region of £35,000 at our largest sports stadia.

Alternatives to staff checking certification in person are being considered, with Scottish football clubs considering the potential to pre-load vaccine certification on to season ticket databases to minimise costs and disruption on match days due to the high proportion of season ticket holders attending matches. The development of such capabilities would require an initial investment and ongoing administrative costs to operate. It is not clear what the cost of this infrastructure would be at this time.

This option may have further financial impacts on events which run over a prolonged period of time such as trade fairs and exhibitions which often run over a number of days. The combination of extended event times and changeover in attendees may require additional staffing capacity to allow for certification checks, in addition to standard ticket checks.

For business events there is additional complexity of exempting one element of the programme (e.g. standing evening receptions), with associated cost and reputational risk of denying delegates who are attending this and all other elements in a work capacity. Business event professionals have shared that the majority of high value business events in Scotland encompass receptions that would be in scope (500+).

There may be additional costs to Option 3 associated with enforcement. The Local Authority Covid-19 Expert Officer Group has estimated the costs to Local Authority Regulatory service at £225,000, based on the assumption that there are 2,000 businesses and 500 events in scope in the initial 6 months. However given the limited scope of the scheme it may be possible for these to be absorbed as part of the work of Environmental Health Officers. Subject to the repeal of capacity limits on live events, the local authority resource could be re-directed to support implementation of certification.

It is noted that businesses engaged with through stakeholder engagement noted that there is a significant risk to the reputation of businesses based in Scotland or those holding events in Scotland that cannot be quantified. But this could also be used to demonstrate that Scotland is a safer place for events to take place and is similar to the approach of many other countries.

Businesses involved in the organisation and staging of live events and ancillary businesses dependent on live events (e.g. food and drink sales, merchandising) may experience knock on effects from the impacts experienced by venues and events.

- *Impact of fluctuating levels of restrictions*

There is a long lead in time to plan and prepare for most events. As such, irrespective of the size of the enterprise, fluctuating levels of restrictions are particularly difficult for events as organisers have little certainty about whether their event will actually be able to take place, resulting in them carrying significant risk. This is exacerbated by the lack of availability of cancellation insurance for events due to the pandemic. A reinsurance scheme has recently been introduced by the UK Government¹⁶. However, it is unlikely that those events covered by certification will be eligible for insurance to cover costs of implementation as the insurance policy has to be in place before the measure affecting operation if the event is announced. The introduction of Vaccine Certification halfway through the planning process of an event may lead to disruption as it will entail additional costs to businesses, as outlined in the Options section. On the other hand, certification could increase that sought-for certainty that the event will take place.

Benefits

This option would result in the most benefit to public health and would reduce the risk of infection and transmission of the virus and subsequent hospitalisations and pressure on the NHS. SAGE say that one approach to reducing the risk of non-isolated cases entering high risk settings is a COVID certification scheme - based on negative testing, vaccination, or proof of prior infection. SAGE considered with a medium confidence that a certification scheme could potentially have medium effectiveness¹⁷. We acknowledge that the public health impact will grow as the percentage of certification checks is increased, recognising that operators may need to take a graduated approach to building up % of checks. As the frequency of checks are raised, with both customers and businesses getting used to the scheme, the robustness of the scheme from a public health perspective will increase.

Reducing transmission will benefit business as it would reduce the likelihood of implementing more onerous restrictions or closing sectors completely.

¹⁶ [Live Events Reinsurance Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

¹⁷ [S1216 Considerations in implementing longerterm baseline NPIs.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

There may also be additional benefits to affected venues and businesses should this option result in a competitive advantage for settings in scope, as they would be perceived as 'less risky' environments. This may provide reassurance to previously reluctant or risk-averse customers and encourage greater attendance, with positive revenue impacts. This is supported by evidence on public attitudes: Research into public attitudes carried out by YouGov for the Scottish Government, on 24-25 August 2021, (n=1,006 people in Scotland) highlighted attitudes towards the benefits and concerns of a certification scheme. Around three quarters, (74%) would be happy to share their vaccination status or test results via a certification scheme to allow entry to a venue and 62% say that this would make them feel more comfortable if they were to go to a venue or an event (up from 58% in [early June](#)).¹⁸ Earlier survey data from spring, such as a British-wide survey on the requirement of vaccine passports between 26 March – 9 April showed that there was 72% support for their use at large public events (vs 63% average comparators).¹⁹ Further UK-wide polling conducted on 7-8 April with 1,705 adults indicated that respondents were most supportive of using 'Covid certificates' in large capacity venues such as music festivals (62%) and sports stadiums (62%), closely followed by six in ten (60%) who would support nightclubs requiring patrons to show evidence they are immune or have recently tested negative for the virus.²⁰

Option selected: Option 3

As part of a package of mitigation measures, such as mandatory face coverings in some settings, provision of contact details in hospitality, test and protect with support for people to self-isolate and quarantine requirements for high-risk international arrivals, Covid Vaccine Certification should ensure that only fully vaccinated individuals or people who are exempt are present at these events, reducing the risk of infection and severe illness leading to hospitalisation amongst the attendees. SAGE have acknowledged the potential benefits of introducing a vaccine certification scheme in conjunction with a package of other NPIs to limit contact between infected and susceptible individuals, thereby minimising the risk of infections and serious disease. **Error! Bookmark not defined.**

Therefore, based on the current scientific evidence and balancing the direct harm of Covid (Harm 1) with the harm on wider society and the economy (Harms 2, 3 and 4), Option 3 has been deemed proportionate to protect public and economic health. Initially, the scheme will not include a negative test result as an alternative to proof of vaccination, but this will be kept under review. At this stage, we do not consider that including testing results would be appropriate and, indeed, could undermine one of the policy aims of the scheme: to increase vaccine uptake. Also, it is important at this stage to prioritise PCR lab capacity for Test and Protect purposes and while promoting regular LFD tests is an extremely important aspect of our overall

¹⁸ Methodology: This survey has been conducted using an online interview administered to members of the YouGov Plc UK panel of 800,000+ individuals who have agreed to take part in surveys. Emails are sent to panellists selected at random from the base sample. The e-mail invites them to take part in a survey and provides a generic survey link. Once a panel member clicks on the link they are sent to the survey that they are most required for, according to the sample definition and quotas. (The sample definition could be "GB adult population" or a subset such as "GB adult females"). Invitations to surveys don't expire and respondents can be sent to any available survey. The responding sample is weighted to the profile of the sample definition to provide a representative reporting sample. The profile is normally derived from census data or, if not available from the census, from industry accepted data. The figures have been weighted and are representative of all Scottish adults (aged 18+).

¹⁹ [Présentation PowerPoint \(ipsos.com\)](#)

²⁰ [COVID certificates: where do the public stand? | YouGov](#)

approach, further work would be required on an optimal approach to incorporating testing, including consideration of the appropriateness of self-testing in this context.

At this point in time, Scotland will be the only European country that will adopt a vaccine only certification scheme with no option to provide a negative PCR or antigen test result or proof of recovery from a previous Covid-19 infection within a predetermined time period. The proposed certification scheme in Scotland is also narrow in scope compared to most comparator countries with some countries requiring certification for all indoor settings.

Scottish Firms Impact Test

We have considered the impact that these regulations will have on Scottish businesses.

The introduction of a new legal requirement to utilise Covid Vaccine Certification domestically will have an impact on Scottish companies in a number of ways. Scottish businesses have invested large sums in protective measures and this new requirement will incur financial expenditure and, for some businesses, loss in revenue. Consumers may alter their behaviour and favour settings where Covid Vaccine Certification is not required. Equally other consumers could favour settings where Certification is required.

- *Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?*

As has been the case throughout the pandemic, policy divergence could present challenges for organisations operating across different parts of the United Kingdom as they implement different rules and regulations around certification, and adapt their messaging which could lead to additional costs.

While some aspects of the policy are aligned, there is not a completely aligned 4 nations approach to the mandatory use of Covid Certification. On 17 September, Wales announced that, from 11 October, individuals over 18 years old will have to prove they have a COVID pass, which includes testing as an alternative to vaccination, in order to attend the same settings that are in scope for Scottish Certification.²¹ The UK Government have stated in their report 'COVID-19 Response: Autumn and Winter Plan' (14th September 2021) that a contingency 'Plan B' may be implemented that would include a vaccine certification scheme without the option to test negative or to provide proof of recovery from a previous Covid-19 infection within a predetermined time period.²² The UK Government subsequently published a call for evidence on the proposal for mandatory COVID certification in their Plan B scenario (27th September 2021)²³. They propose the use of certification in all nightclubs, and other venues open after 1am with alcohol, music and dancing and the same events thresholds as the Scottish Government. They are also considering the same exemptions with the addition of 'commemorative events' and 'diplomats or someone working for an international organisation'. At the time of writing, Northern Ireland has not made any announcement regarding domestic Certification.

²¹ Welsh Government (17 September 2021). [Covid pass for events & nightclubs announced](#)

²² [COVID-19 Response: Autumn and Winter Plan 2021 - GOV.UK \(www.gov.uk\)](#)

²³ [Proposal for mandatory COVID certification in a Plan B scenario: call for evidence - GOV.UK \(www.gov.uk\)](#)

The divergence between policy across the UK could create competitive advantages and disadvantages for Scottish businesses. Some consumers may feel more secure in an environment with more widespread measures, and therefore prefer to travel to or do business in Scotland. Others businesses, particularly with high numbers of international clients and customers, may prefer to visit business in England where individuals would not be required to present their vaccine status when visiting hospitality venues or attending large events. This may be seen as a less burdensome option. Equally, tourists may choose to visit England, Wales or Northern Ireland rather than Scotland for the same reasons. However, Covid passes have been in operation in other countries for some time and operated across wider settings so a limited certification scheme may not deter prospective visitors to Scotland who may be familiar with similar schemes. It is uncertain at present whether consumer behaviour will lead to wider use of certification in Scotland becoming a net advantage or disadvantage for Scottish business.

A reinsurance scheme for events has recently been introduced by the UK Government²⁴. However, it is unlikely that those events covered by certification in Scotland will be eligible for insurance to cover costs of implementation as the insurance policy has to be in place before the measure affecting operation if the event is announced. This could put Scottish event organisers at a disadvantage compared to businesses in England if the scheme is introduced at a later date there.

Events Industry in the UK

As the requirement to utilise Covid Vaccine Certification applies to unseated indoor events of more than 500 people, customers may choose to attend outdoor events where there is no requirement, which may give some venues a competitive advantage. However, due to the climate and weather in Scotland, it is worth noting that it is not viable for events to take place outside for large parts of the year and would likely have little impact over the autumn and winter months.

With additional costs incurred through certification, larger events could well struggle to break even and might therefore lose out in comparison to smaller venues who can continue to host events under 500 attendees.

- *How many businesses and what sectors is it likely to impact on?*

The industry association “2020 UK Events Report” reported direct spend of £70 billion in the events sector in the UK in 2019. VisitScotland has estimated 9% of the UK total can be attributed to Scotland, representing £6 billion of direct spend to the Scottish economy and also accounting for approximately half of the country’s total visitor spend.

Industry Statistics

Direct and indirect impacts on the Events Industry arising from certification would accrue to venue operators, but also potentially on event organisers, performers, support businesses and ancillary businesses, operating across a range of event types, depending on audience numbers. It is not currently possible to indicate the full range of individual events that would be impacted by the regulations, or the associated number of wider businesses affected. The

²⁴ [Live Events Reinsurance Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

following data therefore presents a summary of data on businesses associated with staging and supporting of events in Scotland overall.

It is estimated, based on the Inter-Departmental Business Register 2020 and 2019 Business Register and Employment Survey that there are 3,785 Events Industry businesses in Scotland. Event catering businesses, performing arts, activities of sports clubs and activities of exhibition and fair organisers are such businesses in Scotland that fall under this classification²⁵. These businesses operate across 4,625 sites (as some businesses may have more than one site) and are estimated to employ around 56,000 people. It is unclear what proportion of these businesses will be affected by the introduction of certification as detailed data is unavailable on the scale of services/business revenue generated from the settings within scope. We currently have no specific data on supply chains for these businesses. It is likely that most of these are based in cities and larger towns although it is not possible to obtain detailed data at this time.

Based on the Annual Business Survey 2018, the events industry had an estimated Turnover of £1,927 million in 2018 (0.8% of Scotland's non-financial business economy Turnover in 2018) and an estimated Gross Value Added (GVA²⁶) of £978 million in 2018 (1.0% of Scotland's non-financial business economy GVA in 2018). The local authority areas contributing most to total GVA within the events sector in 2018 were Glasgow City (17%), City of Edinburgh (15%) and Fife (9%).

Local Authority area	Total Turnover £m	% of Total Events Turnover	Gross Value Added at Basic Prices £m	% of Total Events GVA
ABERDEEN CITY	137.0	7%	75.1	8%
ABERDEENSHIRE	56.1	3%	29.9	3%
ANGUS	30.8	2%	17.2	2%
ARGYLL AND BUTE	26.4	1%	15.4	2%
CITY OF EDINBURGH	315.2	16%	150.1	15%
CLACKMANNANSHIRE	12.1	1%	6.4	1%
DUMFRIES AND GALLOWAY	31.1	2%	17.3	2%
DUNDEE CITY	103.1	5%	59.2	6%
EAST AYRSHIRE	20.5	1%	10.0	1%
EAST DUNBARTONSHIRE	27.3	1%	17.2	2%
EAST LoTHIAN	49.8	3%	22.6	2%

²⁵ Events Industry defined here using the following SIC2007 codes:

5621 : Event catering activities

9001 : Performing arts

9002 : Support activities to performing arts

9004 : Operation of arts facilities

9311 : Operation of sports facilities

9312 : Activities of sport clubs

68202 : Letting and operating of conference and exhibition centres

74209 : Other photographic activities (not including portrait and other specialist photography and film processing)

79909 : Other reservation service activities (not including activities of tourist guides)

82301 : Activities of exhibition and fair organizers

82302 : Activities of conference organizers

93199 : Other sports activities (not including activities of racehorse owners)

²⁶ Gross value added (GVA) represents the amount that individual businesses, industries or sectors contribute to the economy. It is the value of an industry's outputs less the value of intermediate inputs used in the production process.

For the sports sector, certification will impact on Scottish Rugby home internationals, Scottish Football home internationals, and the home fixtures for all of Rangers, Celtic, Aberdeen, Hearts and Hibernian. The two Dundee clubs may occasionally be affected too. Scottish Rugby have 4 home fixtures over October and November and the Scottish football team have 2. However, for domestic games, one of the Glasgow and Edinburgh clubs will have a home fixture each week and there will be additional domestic and European cup matches where certification is required.

Late night venues with music, alcohol and dancing

It is estimated, based on the Inter-Departmental Business Register 2020 and 2019 Business Register and Employment Survey that there are 120 businesses under the heading non-charity licensed clubs. Nightclubs and sexual entertainment²⁸ businesses in Scotland fall under this classification. These businesses operate across 145 sites (as some businesses may have more than one site) and are estimated to employ around 2,500 people. It is not possible to separate out sexual entertainment venues from this, though it is understood less than 20 operate in Scotland as of 2015. The vast majority of nightclub and sexual entertainment businesses are small (employing less than 50 people). We currently have no specific data on supply chains for these businesses. It is likely that most of these are based in cities and larger towns although it is not possible to obtain detailed data at this time.

- Based on the Annual Business Survey 2018, nightclub businesses had an estimated Turnover of £84 million in 2018 (0.03% of Scotland's non-financial business economy Turnover in 2018).
- Based on the Annual Business Survey 2018, nightclub businesses had an estimated Gross Value Added²⁹ of £44.6 million in 2018 (0.05% of Scotland's non-financial business economy GVA in 2018).
- Based on the Inter-Departmental Business Register 2020, it is estimated that there are 120 nightclub Businesses in Scotland. These businesses operate across 145 Sites (as some businesses may have more than one site).
- Based on the Business Register and Employment Survey (BRES) 2019, it is estimated that nightclub businesses provide 2,500 Jobs across Scotland (0.1% of Scotland's Jobs in 2019).

Late Night Venues – Hybrid Venues

There are potentially premises that might be classed as pubs or restaurants in official statistics that could fall within scope of the regulations.

²⁸ As per previous work for Nightclub related BRIAs (e.g. p54-71: The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (legislation.gov.uk) – Nightclub businesses are defined here as non-charity licensed clubs (within Standard Industrial Classification code 56.103). Nightclubs and sexual entertainment businesses in Scotland fall under this classification. The SIC code definition of nightclubs used here does not align perfectly with the definition of nightclubs used in certification regulations. These statistics therefore represent a best estimate.

²⁹ Gross value added (GVA) represents the amount that individual businesses, industries or sectors contribute to the economy. It is the value of an industry's outputs less the value of intermediate inputs used in the production process.

Stakeholder estimates suggest that there may be around 300-400 premises across Scotland that operate as 'hybrid' venues (e.g. as pubs or restaurants during the day, and late night venues with music, alcohol and dancing at night). Stakeholders have also suggested there may potentially be up to 1,500 premises that may operate with some of the late night venues with music, alcohol and dancing characteristics (e.g. late opening, dancefloors, loud music).³⁰ However, it is not currently clear the extent to which all or some of these premises would fall within scope of the regulations.

- *What is the likely cost or benefit to business?*

There will be costs to businesses that fall within scope of late night venues with music, alcohol and dancing, and businesses involved in staging live events of sufficient size to fall within scope of the regulations. These include both direct costs of compliance with the regulations, potential losses of footfall and revenue.

Direct costs would arise in the form of one-off costs associated with installation of IT hardware and software to allow staff to check customers' vaccine certification, on-going costs such as hiring and paying additional staff to check certification status, and costs associated with staff training. The extent of these costs would likely vary across businesses, depending on the scope to integrate them into existing staff functions, use existing IT infrastructure, or physical infrastructure. They may also be mitigated across settings according to implementation arrangements, such as use of spot checks outside large venues or stadia.

There may also be costs associated with lost footfall and revenues from unvaccinated customers being unable to access certification, or those deterred from entry because of longer wait times, with footfall potentially displaced to venues not covered by the regulations. Whilst footfall may be displaced to other venues, these venues will not be comparable as all of the criteria for certification will not have been met. The inclusions of all venues that have music, dancing and alcohol after midnight was intended to reduce the impact of this displacement (as well as increasing the public health benefit) as comparable hybrid venues to nightclubs are within scope of the scheme. Furthermore, this may reduce over time as greater numbers of people become vaccinated and able to access certification; impacts may also be mitigated by the reassurance to potential customers that other customers within venues will have been fully vaccinated. There may be further cash-flow pressures on some businesses should introduction of vaccine certification result in those that have purchased tickets for events subsequently becoming unable to attend, and consequently seeking refunds. Lost footfall and revenue may also impact on wider businesses involved in the organization and delivery of events, and dependent on event footfall for revenue.

The benefits to affected businesses arise from continuation of ability to trade, and from a reduced risk that further, more restrictive measures on capacity and opening conditions would be required in order to control spread of the virus. Previous measures have had substantive impacts on revenues for affected businesses, and will have created challenging pressures around business viability.

There may also be benefits to affected venues and businesses should this option result in a competitive advantage for settings in scope, as they would be perceived as 'less risky' environments, owing to an absence of unvaccinated people. This may provide reassurance to

³⁰ Night Time Industries Association (2021), Covid Status Certification: NTIA Scotland Briefing Paper

previously reluctant or risk-averse customers and encourage greater attendance, with positive revenue impacts.

Competition Assessment

- *Will the measure directly or indirectly limit the number or range of suppliers?*

Unclear. Measure will potentially restrict some consumers' ability to attend late night venues with alcohol, dancing and music and live large scale events, and potential displacement to less regulated alternative venues and settings. This may place increased pressure on businesses involved in these activities through reduced footfall and turnover, with consequent pressures on business viability. This pressure may encourage business exit if sufficiently severe and long-lasting. However, it will also be influenced by consumers' decisions around vaccine uptake, and the duration and severity of the wider pandemic.

- *Will the measure limit the ability of suppliers to compete?*

Unclear. Measure primarily impacts on consumers' ability to access venues and live events. However, there may be potential for displacement of unvaccinated consumers to other, less regulated settings. Similarly the displacement of vaccinated customers towards venues operating with Covid Vaccine Certification could occur.

- *Will the measure limit suppliers' incentives to compete vigorously?*

No. Measure will potentially restrict some consumers' ability to attend late night venues with alcohol, dancing and music and live large scale events, with potential for displacement to other less regulated settings (e.g. pubs) or greater competition for events providers and venues from other geographies. This may strengthen suppliers' incentives to compete across different markets.

- *Will the measure limit the choices and information available to consumers?*

Yes. Consumer choice of evening and live entertainment among those unable to obtain vaccine certification may be reduced in terms of attending late night venues with alcohol, dancing and music and some live events. However, this would be as a consequence of those consumers' decisions around vaccination take-up and would be temporary, should affected consumers decide to take up offers of vaccination.

Consumer Assessment

- *Does the policy affect the quality, availability or price of any goods or services in a market?*

No. The quality of goods and services available to consumers is unlikely to be impacted by the introduction of these regulations. However, the nature of services in different sectors will change as Certification is mandatory in some settings and not others.

- *Does the policy affect the essential services market, such as energy or water?*

No. There is no expected impact on markets for essential services.

- *Does the policy involve storage or increased use of consumer data?*

Yes. The interim solution does include increased use of consumer data. The QR codes available at launch will contain the first name, surname, date of birth and vaccination information for each dose, as described in the [EU Specification](#). This information will be displayed to the verifier of a QR code at a venue or event once they scan it with the NHS Scotland COVID Check App. Similarly, if someone is exempt, the interim solution (an exemption certificate) will state that fact and can be seen by the verifier. However, once the NHS Scotland Covid App has been upgraded to include a domestic mode, the QR codes in the domestic mode will present minimal personal information of the consumer, simply relaying eligibility. It is important to note that the personal data of individuals whose vaccination status is being verified is never stored or transmitted by the NHS Scotland COVID Check App. Once verification is complete, the personal data is deleted.

- *Does the policy increase opportunities for unscrupulous suppliers to target consumers?*

Unclear. There is a risk that businesses that are outwith the settings outlined by the policy will adopt Covid Vaccine Certification. There is also a risk that even those businesses that are in scope will adopt it for a definition of 'consumer' broader than what is intended (i.e. more than just attendees, for example performers or staff).

The Regulations will mitigate these risks to an extent, as they will clearly define the settings where there will be a legal requirement for businesses to take all reasonable measures to check vaccination status. Equally, the Regulations will be clear that that legal requirement will not apply to employees or any person other than the attendees or 'consumers' of the service.

Additionally, the risks will be further mitigated with sectoral guidance. To support effective implementation consistent with our policy aims, we will provide more information to the sectors where certification is mandated on the policy and regulations, and the appropriate implementation, enforcement and handling of exemptions.

Ministers have been clear that certification will not be a requirement for public services or other settings that many people have no option but to attend such as retail, public transport, health services and education. We recognise that some businesses, outside the settings in scope, are asking people for evidence they have been fully vaccinated as a condition of entry or as a condition of employment. Businesses which are not covered by the Government's scheme are required to meet their obligations under all relevant law including data protection, the Equality Act and Human rights in their design and implementation of any such policy. For more information see the Equality and Human Rights Commission Guidance for Employers [here](#).

- *Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?*

Yes. Consumers (i.e. attendees of the venues and events in scope) will have information about their rights regarding their personal data. A Privacy Notice has been produced and can be found on [NHS Inform](#). We are also developing Data Protection Impact Assessment (DPIA) which will be accessible to the public and kept up to date.

The Scottish Government is undertaking significant media relations and social media activity through Scottish Government accounts to increase awareness among the public of domestic certification. This is being supported by paid for advertising activity during September and October that will reach 3.32 million adults through radio and digital advertising. Also, information on domestic certification is being added to nhsinform.scot. Promotional materials are being distributed to key stakeholders to be used by those businesses and locations where domestic certification will be required.

- *Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?*

There is no expected impact on the routes for consumers to seek advice or raise complaints on consumer issues.

Test run of business forms

No statutory forms will be created.

Digital Impact Test

- *Does the measure take account of changing digital technologies and markets?*

Yes. How we aim to deliver Certification takes into account that most businesses and customers use technology and prefer digital solutions that smooth processes over more effectively. For example, Research into public attitudes carried out by YouGov for the Scottish Government, on 24-25 August 2021, (n=1,006 people in Scotland) highlighted attitudes towards the benefits and concerns of a certification scheme. Over half of respondents (55%) would download and use a mobile app to prove either vaccination or a negative test result, with just over one in five (23%) saying they would not use such an app.¹⁸ Consequently, without losing sight of the paper-based alternative, we are actively promoting the use of the digital package (the NHS Scotland Covid App and the NHS Scotland Covid Check App) as the most efficient method to operationalise Certification. In the longer term, we see the NHS Scotland Covid App as both an opportunity and a stepping stone that will enable greater digital access to medical data more broadly for Scottish residents.

- *Will the measure be applicable in a digital/online context?*

No. Although Certification will be delivered mainly through digital means, it can only apply in physical settings where there is a risk of transmission of the virus. Therefore, the policy will not apply in a digital context.

- *Is there a possibility the measures could be circumvented by digital / online transactions?*

No. We do not envisage the policy being circumvented by digital transactions – large events on streaming or any experience of a late night venues with music, alcohol and dancing other than

in-person are unlikely to be regarded as comparable substitutes. Therefore, there is no possibility to circumvent the policy digitally.

- *Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?*

No. The policy will not be applicable at all in a digital context, so it will not have an adverse impact on traditional business. As a matter of fact, one of the aims of the policy is to avoid having to close higher risk settings. Therefore, the policy is designed to help, rather than adversely impact, offline businesses.

- *If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?*

No. As explained, the policy will not be applied in an online environment. Therefore, we do not envisage any adverse impact on incumbent operators of nightclubs or large events.

Legal Aid Impact Test

The policy does not in itself create any new legal rights.

The regulations includes enforcement measures which could in some cases lead to prosecution. These are linked to existing mechanisms within the Health Protection Coronavirus (Requirements) (Scotland) Regulations 2021. The intention is not to criminalise individuals in the sense of attendees at the premises and events at which certification is required and at present it is envisaged the policy will have minimal to no impact on Legal Aid.

Enforcement, sanctions and monitoring

The regulations will set out that not putting in place a reasonable system to restrict entry only to those fully vaccinated (unless exempt), and the failure to prepare and maintain a compliance plan for the system and other measures to minimise the risk of coronavirus transmission, will be an offence for a person responsible for the premises. Local Authority regulators, like Environmental Health Officers (EHOs) and Trading Standards Officers, are responsible for enforcing the requirements of businesses. We will ensure in regulations that Local Authority (LA) officers have the powers that they will need to enforce this scheme in a proportionate and risk-based manner.

Businesses which meet the criteria for Certification as set out in the Regulations will be required to develop a plan that Local Authority regulators can request to see. In term of compliance monitoring and enforcement, this will be 'front loaded' through pre-event planning and LA officers inspecting plans at venues during the daytime in first instance. For larger events, and more high profile, high risk games, there are likely to be LA officers on site during the event. Intelligence received from Police Scotland and/or complaints by customers/ other traders will be investigated post-event where resourcing permits on a risk/triage basis. A summary of expected activity is as follows:

Pre-event/ night engagement

- SG to share communications that Local Authorities can send out via email to venues and any business as usual direct engagement. The targeted audience for that communication will reflect the premises included and activities affected.
- Local Authorities can also engage via event planning channels like Safety Advisory Groups (SAGs).

On the day

- Large events/large football games e.g. national team will usually justify Local Authority officer 'boots on ground', while other events would be on a targeted basis, determined through engagement with Police Scotland and resourcing by the Local Authority in question.
- Late night venues with alcohol, music and dancing, – some Local Authorities may have Local Authority officers on the ground on some weekends or nights but not routinely. Compliance checks would be planned on a targeted intelligence gathering basis, informed by repeated complaints on a venue.

Post event/night

- Local Authorities would investigate concerns reported and consider intelligence gathered and take action as necessary.
- Enforcement requires corroborated evidence to initiate formal action, which will be supported by targeted compliance checks based on intelligence.

The Local Authority Covid-19 Expert Officer Group has estimated the costs to Local Authority Regulatory service. Based on the assumption that there are 2,000 businesses and 500 events in scope, costs are estimated at £225,000 in the initial 6 months. Since capacity limits on live events will be repealed, the local authority resource currently used in relation to capacity limits could be re-directed to support implementation of certification.

Police Scotland may have a role should there be any public disorder or serious criminal offences such as fraud associated with certification. Effective stewarding and policing activity routinely operates to mitigate disorder and discourages fraudulent activity and the additional costs of certification are not expected to be significant. Any costs can be absorbed as part of Police Scotland's role in respect of live events and other settings in scope.

Implementation, delivery plan and post-implementation review

The Scottish Government will be responsible for monitoring and evaluating the policy. As the regulations have been laid under the Coronavirus Act 2020, there is a requirement to review the regulations every 21 days. The extent to which the policy (Covid Vaccine Certification) is achieving the policy objectives (reduce the risk of transmission of Coronavirus, reduce the risk of serious illness and death thereby alleviating current and future pressure on the National Health Service, allow higher risk settings to continue to operate as an alternative to closure or more restrictive measures and increase vaccine uptake) will be monitored and evaluated in line with this requirement. Monitoring and evaluation will also provide us with further information about other positive and negative effects of the introduction of the policy. We will also continue to assess whether any less intrusive measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned; if so, the policy will be immediately reviewed.

The Covid Vaccine Certificate provisions will expire on 28 February 2022, as with all other Covid measures under the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021. Parliamentary approval would be required to extend them further.

Summary and recommendations

The Scottish Government's Strategic Framework includes a package of measures which, taken together, are designed to suppress transmission of the virus. Although daily Covid case numbers are dropping in Scotland, case numbers remain too high, and we still have a large susceptible population which could lead to cases rising again. In addition, the number of people in hospital and ICU continues to increase.

This BRIA has set out the relative costs and benefits of certification options with the intended effect of reducing the risk of transmission, reducing the risk of serious illness and death, allowing higher risk settings to stay open and increasing vaccine uptake. Our assessment of the options has been informed as much as possible by engagement with the sectors in scope.

A summary of costs and benefits associated with the options is presented below in Table 4:

Measure	Benefits	Costs
Option 1: Do not introduce vaccine certification – where baseline measures are in place, we continue with them including in higher risk settings	<p>Businesses would continue to trade as under current circumstances, and would not be required to adhere to any further restrictions.</p> <p>There would be little additional public health benefit, over and above that arising from continued use of baseline measures in higher risk settings.</p>	<p>Businesses would not incur any additional infrastructure and staffing costs. Therefore this option is not likely to have immediate financial implications beyond those associated with continuation of baseline mitigation measures.</p> <p>However if the state of the epidemic requires further more restrictive measures and even closures to be considered, the negative economic impact on these sectors is likely to be significant.</p>
Option 2: Introduce voluntary, non-regulatory, vaccine certification in higher risk settings	<p>No new or additional requirements of businesses regarding certification, unless they chose to implement it.</p> <p>Public health benefit would depend on scale of</p>	<p>Businesses choosing to introduce certification would incur costs relating to additional staffing and infrastructure. It is likely that restrictive measures and even closure may be required.</p>

	adoption in higher risk settings.	
Option 3: Introduce mandatory vaccine certification in higher risk settings and remove capacity limits from regulations	<p>Sectors in scope are characterised by many of the high risk factors associated with transmission of the virus. Certification is an additional means through which we can continue to reduce the risk of transmission. As such, it will mitigate the risk of closure and more restrictive measures, and consequent negative economic impact.</p> <p>This option would result in the most benefit to public health and would reduce the risk of infection and transmission of the virus and subsequent hospitalisations and pressure on the NHS.</p>	<p>These include both direct costs of compliance with the regulations (staffing and infrastructure), potential losses of footfall and revenue arising e.g. from refunds to customers, cancellation of events. This could be offset by people choosing to go to settings where there is certification.</p>

Table 4. Summary table.

We conclude that Option 3 - a limited and targeted Certification scheme - is a necessary and proportionate response, alongside an effective baseline of public health measures, which will best meet our policy objectives. Monitoring and evaluation will inform implementation as well as regular review (at least once every 21 days) of the Regulations to determine whether any less intrusive alternative measures could be introduced to achieve the same combination of policy objectives in respect of the higher risk sectors concerned.

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: John Swinney

Date: 30th September 2021

Minister's name: John Swinney MSP

Minister's title: Deputy First Minister and Cabinet Secretary for Covid Recovery

Annex A: Stakeholders and sectors engaged

Business

Hospitality

Tourism

Events, including the Events Industry Advisory Group and wider, individual enterprises and industry members.

Performing arts / arts venues

Higher education

Disability organisations

Police

Trade Unions

Night time economy

Local Government (Environmental Health Officers)

Sporting organisations (Football, Rugby, Horse Racing)

Music Industry

Legal specialists