

Vaccine passports must be legislated for properly through Parliament

Dr Richard Mackenzie-Gray Scott

This piece is [cross-posted](#) with the kind permission of Prospect Magazine, with the piece originally appearing on 28th May 2021.

Parliament has been [marginalised](#) in the implementation of much policy during this pandemic. Vaccine passports present an opportunity to change that.

In the past few weeks, a limited vaccine passport scheme has been introduced in England, Scotland and Wales, in which individuals can now request documentation proving their vaccination status. The scheme has been introduced without parliamentary approval, and with no new legislation governing the form or use of these documents. Before vaccine passports are rolled out any further, their use should be prescribed by a properly debated [Act of Parliament](#). This is a requirement of both the rule of law and democracy.

The rule of law requires that clear and certain laws exist to regulate our conduct. This is a basic prerequisite of fairness—if we are going to be held to account under a law, we need to know what that law actually requires. Pragmatically, if the government want us to follow rules, it needs to set those rules out in an accessible way.

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

The majority of the restrictions on personal liberty to combat coronavirus have not come from primary legislation, but have been imposed by secondary legislation made by a single minister. All the lockdown rules and all the international travel rules have been made in this way. Some secondary legislation eventually makes its way to parliament, and has invariably been approved—but this is not surprising, as amendments are not permitted and there has been limited room for debate. Although urgency can necessitate this type of procedure, using delegated legislation as the default mode of lawmaking for significant national measures does a disservice to democratic legitimacy.

Vaccine passports provide a chance to legislate properly. The government should introduce a bill before parliament, where the minister will have to explain and justify it in a debate. Each clause can be scrutinised and amended. Bad ideas can be exposed and deleted. Good ideas can be expanded. The public can hear the arguments in favour of each aspect of the bill. Stakeholders can share their views in a transparent way. Parliament can then make an informed choice.

Whatever choice parliament makes, some key issues are worth addressing in order to ensure that any vaccine passport scheme is properly regulated.

Should there be a UK-wide scheme with consistent rules across England, Scotland, Wales and Northern Ireland? Creating

legislation for the whole country will require infrastructural consistency as well as political co-operation. In England, the NHS app is already being used to allow individuals to show their vaccination status for the purpose of [international travel](#) — but because healthcare is devolved the app is not functional in Scotland, Wales or Northern Ireland. A common digital platform will need to be developed before a consistent scheme is possible. Transparency is key. What partnerships are being formed with government? Who will provide any potential vaccine passport platform, and why will they have been chosen? Cronyism need not continue.

Discrimination concerns also need to be addressed. Not everyone who is offered a vaccine is able or willing to take it. Not all members of our communities will be vaccinated. Vaccine hesitancy is real, and some people simply cannot be vaccinated due to medical conditions. If vaccine passports become a precondition for participation in everyday life, it will likely lead to discrimination against unvaccinated people. One solution could be allowing people to provide proof of a negative coronavirus test as part of any vaccine passport scheme, but this is not necessarily feasible or desirable, as tests are expensive and time-sensitive.

Any law on vaccine passports will also need to properly manage data protection and privacy risks. The information collected by a digital platform would be highly sensitive health-related data, which is subject to heightened protection measures. There is already much room for improvement here. Just this month it was [revealed](#) that anyone who knew basic identity details about another person could use the NHS vaccination booking site to discover that person's vaccination status.

As well as ensuring that any vaccine passport scheme complies with data protection and privacy laws, legislation will need to include clear safeguards to protect against longer-term mission creep. The rule of law requires powers introduced in response to emergency situations to be [limited](#) in duration, circumstance and scope. However, once the infrastructure for a digital identity scheme is established, it could be used for expanded purposes without a proper discussion as to whether such expansion is necessary or desirable. Emergency legislation should be kept "[socially distanced](#)" from ordinary legislation. Legislation introducing vaccine passports should be narrow in scope and strictly time limited, with a sunset clause.

If the government intends to leave room for some places to choose whether or not they use vaccine passports, then there should be a legislative framework governing and circumscribing that discretion. If gaps in the legislation leave private organisations free to make their own rules, we could well see fragmented private regulation. Primary legislation is in the interest of these private organisations, because without a coherent legislative framework setting out when and how they can request proof of vaccination status, they may run the risk of inadvertently breaching data protection, employment and equality laws.

Whether they are a small business owner, multinational employer, or someone wanting a pint at the pub, it is in the public's interest that vaccine passports be regulated via primary legislation provided by parliament.

Authors:

Dr [Richard Mackenzie-Gray Scott](#), Research Fellow in Public Health Emergencies and the Rule of Law

[Katie Lines](#), Research Fellow in Rule of Law Monitoring of Coronavirus Legislation

Dr [Ronan Cormacain](#) is a Senior Research Fellow and lead of the Rule of Law Monitoring of Legislation Project

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