



## COVID PASSPORTS

A necessary tool to restore our lives?

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## EXECUTIVE SUMMARY

1. A COVID passport would be an official record after vaccination entitling the holder to access otherwise prohibited premises, services or opportunities for employment.
2. Such passports must be verifiable and proof against fraud. Probably, duration should be limited, initially, to one year but be renewable on proof of valid immunisation.
3. Such passport might be 'hard' like a driving licence. It might also be digital. The Open University's *Open Blockchain* project offers a blueprint for a potential app to hold verifiable decentralised data about an individual's COVID antibodies or a record of vaccination. The question arises whether it might be added to the NHS COVID App. The elderly or socially disadvantaged must not be disqualified.
4. It is uncertain what precise protection vaccination gives against infection and infecting others. But it is clear that vaccination will be an important tool in preventing the spread of infection. If it is possible to offer fewer restrictions on certain activities to the vaccinated, that will provide an incentive to be vaccinated.
5. In Israel, consideration is being given to a 'green passport' for those vaccinated to permit its holders to attend events and restaurants. They would be freed from quarantine if returning from abroad. Simultaneously, there would be (renewable) digital passports valid for three days after a negative COVID test. This is intended to prevent division between the vaccinated and unavoidably non-vaccinated. A similar scheme is likely in Denmark.
6. It will be hard for most employers to require staff to be vaccinated. But COVID passports might have a bigger role to play for travellers, e.g., allowing them (alone) to leave the UK, or to enter without quarantine.
7. There must be a coordinated system across the UK to ensure a common approach and standards. This will likely require UK-wide legislation. It is imperative that a Scot travelling to England, for example, should be 'passported' on the same terms and with the same level of verification, as in English person travelling to Scotland. They should enjoy equal privileges wherever the passport was issued.
8. There must be strict penalties for forgery and fraud and UK-wide standards of enforcement.
9. If the passport is linked to the Contact Tracing App, Government must ensure that both technical hurdles are overcome and data protection issues are properly addressed.
10. In most situations employers may not be able to insist on staff being vaccinated. However, there is scope for opening up our travel. Consideration could be given to requiring a vaccination certificate as a condition of entry to the UK.
11. A comprehensive vaccination programme is the route to restoring national life. A well-designed COVID passport system could be a useful tool to incentivise vaccination.

## INTRODUCTION

Since the first 'Stay at Home' instruction given by the Prime Minister to the UK on 23rd March 2020, there has been much speculation about how and when lockdown restrictions might come to an end. We all know that eventually schools and universities, not to mention the host of businesses like pubs, restaurants and theatres that are not designated 'essential', will reopen. However, at the time of writing, it is still unclear when or how this will be able to happen.

A possible tool might be the introduction of 'COVID passports' (also referred to as 'vaccine passports' or 'immunity passports'). These would denote that the holder had been successfully inoculated against COVID-19. Media reports have indicated that there are many areas in which employers and consumers are investigating whether the introduction of COVID passports may expedite a return to business as usual. If practicable, such passports would enable the safe opening of different sectors of society.<sup>1</sup> The vaccination of key

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<sup>1</sup> Knesset News, 'Health Minister Edelstein: Other countries very enthusiastic about the idea of a "green passport" for those who get vaccinated' *The Knesset*, 4 January 2021 <https://main.knesset.gov.il/EN/News/PressReleases/Pages/press4121w.aspx> accessed 26 January 2021.

## WHAT IS A COVID PASSPORT?

Currently two vaccines are being given to patients in the UK: the *Pfizer/BioNTech* vaccine and the *Oxford/AstraZeneca* vaccine. This follows their authorisation for emergency use by the Medicines and Healthcare Products Regulatory Agency (MHRA).<sup>2</sup> A third vaccine, developed by *Moderna*, has been approved and should be available later this year while other vaccines from companies such as *Johnson & Johnson* and *Valneva* are expected to come on stream further into 2021.

It is not necessary to go into how the various

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<sup>2</sup> Vaccine knowledge project, 'COVID-19 Vaccines' *Information on Vaccines*, 22 January 2021 <https://vk.ovg.ox.ac.uk/vk/covid-19-vaccines> accessed 26 January 2021.

workers, such as care home workers, medical staff, teachers and university lecturers would expedite the return of healthcare and education, would limit the risk of disruption due to self-isolating staff and reassure members of the public that these activities pose manageable risk. Other industries, such as utilities, construction, plumbing and service companies which require engineers to enter people's homes are also considering the legal ramifications of "no job, no job" policies. The return of access to safe travel by air and sea, without the prospect of quarantine at each end, and the restoration of hospitality, events, sports and the arts would go even further towards returning a semblance of normality.

However, the introduction of COVID passports would not be without considerable ethical, legal and political problems. There will be tensions between a mostly older, vaccinated, 'free' population, and a younger unvaccinated population that must continue to abide by more stringent lockdown rules; but who were at lower risk of harm from the disease itself. This paper considers some of the potential benefits and disadvantages of COVID passports and associated legal issues.

vaccines work for the purposes of this paper. What is relevant is that a COVID passport would consist of an official record, granted following an approved vaccination against COVID-19, which entitles the holder to access otherwise prohibited premises, services or opportunities for employment. COVID passports could allow privileges to be extended to the vaccinated or denied to those who have not been vaccinated.

### **Proof against forgery and fraud**

Any such a record should constitute verifiable proof of vaccination. Furthermore, at least before fully comprehensive vaccination and widespread general access to premises and services, any COVID passport is likely to be highly valuable and

attract the risk of theft or forgery meaning appropriate countermeasures would need to be built in. Fake negative Covid test certificates are allowing people to circumvent travel checks<sup>3</sup>. This is a very important matter.

It will be necessary to determine who would be responsible for the issue and verification of COVID passports, and who would ensure their lawful use through enforcement.

### Renewability

It would also potentially need to be renewable, as at the present time it is unclear for how long a (completed) vaccination<sup>4</sup> will be effective. It does not appear to be like the smallpox vaccination, but more like the protection offered against influenza. If that is correct there will have to be annual inoculations and any passport would have to be updated securely and promptly. There would have to be a means of checking instantaneously whether a passport was out of date. The simplest method, if somewhat crude, might be a fixed duration, e.g., one year from date of issue.

With this in mind there are various forms a passport could take to ensure a central easily accessible but secure record is kept.

### Physical passport

The hard copy cards issued by medical staff to vaccinated patients do not currently have point-of-test proof of identity. In the modern age, it would have to be something akin to a driving licence with a photograph and details of date of birth and address and a number or combination of numbers and letters personal to the individual in question. No doubt it could be married to the proposed new UK travel health card modelled on the European Union health card which many of us carry if we go abroad.

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<sup>3</sup> [www.telegraph.co.uk/news/2021/02/01/fake-negative-covid-test-certificates-allowing-people-circumvent/](http://www.telegraph.co.uk/news/2021/02/01/fake-negative-covid-test-certificates-allowing-people-circumvent/)

<sup>4</sup> Most vaccines currently deployed require a booster jab up to three months later.

### Digital passport

Such certification might also take digital form. The Open University's *Open Blockchain* project, for example, offers a blueprint for a potential app which could hold verifiable, decentralised data about an individual's COVID antibodies or a record of vaccination.<sup>5</sup> The app is scalable and could be operated both by those issuing and receiving COVID passports with minimal training. Such a system is said to be a "totally private" and "tamper-proof record owned entirely by the end user", allowing the person selectively to reveal proof of vaccination without yielding other personal information.<sup>6</sup>

Such features might perhaps be added to the existing NHS COVID App. A system along these lines (if it worked) would have the advantage of being a COVID 'one-stop shop' by integrating the passport with other features, including contact tracing, reminders for patients to get a second dose, or to calculate from when the holder may start to enjoy immunity.

### Mixed physical and digital

A purely digital COVID passport risks disenfranchising those who do not have access to a suitable smartphone or who are unfamiliar with such technology. This will be particularly important for those who are in lower socioeconomic groups and the elderly, classes of individuals who are already likely to be disproportionately affected by COVID.<sup>7</sup> While a digital COVID passport might be among the most secure and easily scalable options, if one is required to enjoy any substantial measure of freedom then these ethical issues must be considered, and procedure for a hard copy contingency devised.

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<sup>5</sup> Marc Eisenstadt et al., 'COVID-19 Antibody Test/ Vaccination Certification: there's an App for That' *IEEE Open Journal of Engineering in Medicine and Biology*, 2020(1):1 <https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=9105054> accessed 26 January 2021.

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

## INCENTIVES TO BE VACCINATED: UNDERSTANDING VACCINATION IN PRACTICE

There are differences between each vaccine, including efficacy at an individual level, the number of doses and time needed to maximise effectiveness, any effect on the transmission or spread of the virus and potentially the length any immunity would last for. Much of this will become clearer as more people receive the vaccine, and the effects can be studied further.

However, the related freedoms and restrictions attached to any COVID passport would need to be considered carefully to avoid unintended consequences. For example, any possible COVID passport ought to entitle the holder to the same privileges whichever vaccine was administered, at least for the appropriate duration for that particular vaccine, as patients should not be tempted to delay a vaccination now because one given later might allow greater access to premises or services.

Proposals for a COVID passport should encourage willingness to be inoculated with an effective COVID vaccine at the earliest opportunity. That is important because substantial effectiveness is not achieved until possibly two or three weeks after the first dose, and longer lasting effectiveness not achieved in many cases, we understand, until after the booster.

Importantly, even after two doses of an effective vaccine, any given individual cannot be regarded as entirely immune to all symptoms of the disease or, more importantly, incapable of spreading it. A vaccinated person may be less likely to catch the disease at all, and in any event should not become seriously ill. That is the plus side. On the downside, a vaccinated person who is nonetheless later infected, may pass the infection to another who has not been vaccinated. The latest reports are optimistic<sup>8</sup>.

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<sup>8</sup> [www.thetimes.co.uk/article/one-shot-oxford-vaccine-strategy-is-vindicated-by-new-study-w6zbqcmgtg?utm\\_source=newsletter&utm\\_campaign=newsletter\\_101&utm\\_medium=email&utm\\_content=101\\_12047549&CMP=TNLEmail\\_7172239\\_12047549\\_101](https://www.thetimes.co.uk/article/one-shot-oxford-vaccine-strategy-is-vindicated-by-new-study-w6zbqcmgtg?utm_source=newsletter&utm_campaign=newsletter_101&utm_medium=email&utm_content=101_12047549&CMP=TNLEmail_7172239_12047549_101)

A holder of a COVID passport would not be invulnerable to COVID, albeit much less likely to pass it on or catch it, and even less likely to suffer severely. The efficacy statistics quoted above describe the average effect on a population of individuals. Although both the Pfizer and Oxford vaccines have been tested on large sample sizes (44,000 and 23,000 respectively), the “real world” long term effectiveness of these vaccinations is less well-known.<sup>9</sup> This would rely to some extent on ‘herd immunity’: a critical mass of enough vaccinated individuals in the population to stop chains of infection in their tracks.

In order to achieve this critical mass, it is in the government’s interest to ensure the maximum number of people are vaccinated as quickly and efficiently as possible. While a programme of state-compelled vaccination is illegal under the Public Health (Control of Disease) Act 1984, with s.45E expressly prohibiting the Secretary of State from making regulations requiring a person to undergo medical treatment, including vaccination.

However, it would be possible to use the promises of fewer restrictions as an incentive for individuals to volunteer to get the vaccine, while reducing the risks to the unvaccinated, particularly if the need for ongoing restrictions goes beyond the medium term.

### Case study: Israel

We now digress briefly. Israel leads the world for the number of vaccinations administered as a proportion of the population. At the beginning of December, the Israeli Minister for Health, Yuli-Yoel Edelstein, told the Knesset’s Constitution, Law and Justice Committee that under the government plan, “green passport” holders would be able to attend events, such as theatrical performances and concerts, and be permitted to eat in

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<sup>9</sup> Vaccine knowledge project, ‘COVID-19 Vaccines’ *Information on Vaccines*, 22 January 2021 <https://vk.ovg.ox.ac.uk/vk/covid-19-vaccines> accessed 26 January 2021.

restaurants.<sup>10</sup> They will not be obliged to quarantine following contact with a confirmed COVID patient and will be free to travel abroad without taking a test. Mr Edelstein said that the potential for such passports is “huge”, with scope for an international agreement that would allow movement of citizens between countries where COVID passports are issued.<sup>11</sup>

As Israel’s ‘Coronavirus Commissioner’ Professor Nachman Ash noted, the purpose of the green passport initiative is to enable the safe opening of different sectors of society.<sup>12</sup> what about those who have yet to be vaccinated? The Israeli Health Ministry will negotiate this thorny issue by also issuing green passports, valid for three days, following negative COVID tests. It said: “There won’t be a lockdown for half the country while half the country is free. This won’t happen”.<sup>13</sup>

Denmark is also reported in *The Times* of 4 February as likely to introduce electronic passports.<sup>14</sup>

As another country where the vaccine rollout has proceeded at a relatively rapid pace, UK policymakers should keep a close eye on the Israeli example when considering future steps and consider taking on board any lessons learned. For example, the Israeli proposal to extend the benefits of COVID passports to those who receive negative

COVID tests may be one way of reducing any indirect discrimination in access to services or premises on the basis of age. Alternatively, the introduction of the COVID passport regime could be delayed until a large cross-section of society across all age groups have received the vaccination. Of course, test facilities would have to be widespread and accessible. We cannot hazard a guess how practicable that is.

### **General issues arising**

Industries, such as utilities, construction, plumbing and service companies which require engineers to enter people’s homes are reporting to be considering the legal ramifications of “no job, no job” policies. The return of access to safe travel by air and sea, without the prospect of quarantine at each end, and the restoration of hospitality, events, sports and the arts would go even further towards returning a semblance of normality.

The introduction of COVID passports without which access to a place is barred, or quarantine is imposed, will not be straightforward. But if we are looking at a time six months hence (autumn 2021) when all those who wish it will have been vaccinated and a further round of annual vaccinations is beginning, barriers we identified above between sectors of the population divided only by age might disappear.

If that important hurdle can be overcome, COVID passports may serve as a useful transitional and then continuing stage between ‘National Lockdown’ and ‘No Restrictions’. COVID passports would offer a significantly more individual and targeted approach. They could also allow for improved contact tracing and efficient allocation of resources. We can see an end to the rapid changes in restrictions which are so damaging to the social and economic fabric of our country.

The uptake of COVID vaccines flowing from the introduction of passports seems likely to offer a quicker means of reaching herd immunity, leading to a much more relaxed regime.

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<sup>10</sup> Knesset News, ‘Health Minister Edelstein: Other countries very enthusiastic about the idea of a “green passport” for those who get vaccinated’ *The Knesset*, 4 January 2021 <https://main.knesset.gov.il/EN/News/PressReleases/Pages/press4121w.aspx> accessed 26 January 2021.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Toi Staff, ‘Health Ministry says vaccinated, recovered to get ‘green passport’ for 6 months’ *Times of Israel*, 4 January 2021 [www.timesofisrael.com/health-ministry-says-vaccinated-recovered-to-get-green-passport-for-6-months](http://www.timesofisrael.com/health-ministry-says-vaccinated-recovered-to-get-green-passport-for-6-months) accessed 26 January 2021.

<sup>14</sup> The Times, Denmark reveals concrete plans for a digital ‘Covid passport’ in world first first [www.thetimes.co.uk/article/denmark-reveals-concrete-plans-for-a-digital-corona-passport-in-world-first-98jprjt60](http://www.thetimes.co.uk/article/denmark-reveals-concrete-plans-for-a-digital-corona-passport-in-world-first-98jprjt60)

## A NATIONAL REGIME OF PASSPORTS: BUT ISSUED BY EACH DEVOLVED ADMINISTRATION

We think it imperative that if such passports were introduced, they should apply across the United Kingdom. They must be in common form for all our citizens, so that, for example, a Scot visiting England or Northern Ireland can produce the same passport and enjoy the same privileges as a resident holding a passport issued there. Health services (the most likely bodies to issue such passports because of their inextricable link with vaccination) are devolved. So, the devolved

administrations must work together with the United Kingdom government to establish a suitable framework under which vaccination passports can be issued which are effective throughout the nation. We think it likely that if this approach is adopted, each devolved administration would issue its own passport. But it should be in identical form save for stating where and by which body it is issued.

## LEGISLATION COORDINATED ACROSS THE UNITED KINGDOM

In England, the regulations introduced to protect the public from COVID, including tier restrictions and mask-wearing, have been made under the Public Health (Control of Disease) Act 1984<sup>15</sup>. The Act confers extremely broad powers on the Secretary of State and gives some particular examples of how the power might be used, such as keeping children away from schools, the prohibition of events or gatherings and requirements relating to the handling of dead bodies.<sup>16</sup>

However, the Secretary of State's power applies only to providing a public health response in England. For the purposes of this Act, "the appropriate Minister" in Wales is the Welsh Ministers.<sup>17</sup> The territorial extent of the Act does not extend to Scotland or Northern Ireland, though they have similar provisions for their own devolved executives.<sup>18</sup> An effective COVID passport system cannot therefore be applied across the entire UK by the Secretary of State alone but would rely on a system for mutual recognition of passports.

We suggest that all powers relating to COVID passports should be granted under a United Kingdom statute to ensure uniformity. It would be sensible for the different jurisdictions to establish a

protocol and a joint committee to handle the introduction and development of the use of passports and agree when and in what terms new regulations are drafted from time to time.

The Coronavirus Act 2020 is a United Kingdom statute passed in March last year. It is in some respects of limited duration of two years from March 2020 unless renewed by Parliament.

This Act confers powers on Ministers in all parts of the UK to issue directions relating to "events, gatherings and premises".<sup>19</sup>

- (a) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in England, or
- (b) facilitating the most appropriate deployment of medical or emergency personnel and resources in England."<sup>20</sup>

Each of the three devolved governments has the power to make (and has made) such declarations, and each executive has their own identical powers.<sup>21</sup>

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<sup>15</sup> as amended by the Health and Social Care Act 2008.

<sup>16</sup> Public Health (Control of Disease) Act 1984 s.45C(4)

<sup>17</sup> Public Health (Control of Disease) Act 1984 s. 45T(6)

<sup>18</sup> Public Health (Control of Disease) Act 1984 s.45C(1)

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<sup>19</sup> Coronavirus Act 2020. For example, in England, under Schedules 21 and 22.

<sup>20</sup> Coronavirus Act 2020 sch. 22 part 2

<sup>21</sup> (e.g. in Scotland) 'Covid-19: Declaration of a Serious and Imminent Threat to Public Health' (Coronavirus – Powers to issue directions relating to events, gatherings and premises, *The Gazette*, 7 April 2020 <https://www.thegazette.co.uk/notice/3546282> accessed 26 January 2021.



Such powers may be used in relation to a specified event or gathering, or events or gatherings of a specified description. Under this section, therefore, Ministers could introduce a requirement for COVID passports for specific events (“The Last Night of the Proms”), series of events (“The Proms”) or types of events (“Concerts”).

Identical powers also exist in relation to the entry into, departure from, or location of persons in, premises.<sup>22</sup> Similarly, directions may be issued in relation to specified premises (“The Savoy Grill”) or premises of a specified description (“Restaurants”).<sup>23</sup>

These sections of the Coronavirus Act 2020, therefore, offer scope for the Secretary of State and Executives in all parts of the UK to introduce COVID passports for access to restaurants, theatres, sports grounds and other premises along the Israeli model. However, these sections operate by imposing obligations on the owner or occupier of the relevant premises, or those in charge of organising the event or managing entry into, or departure from the premises.<sup>24</sup>

Businesses would have to ensure that access to the event or premises is properly regulated. This would require infrastructure and staffing to check vaccination records. The successful introduction of regulations under this section would require COVID passports that are easy to use and offer secure, verifiable proof of vaccination, as well as the opportunity to integrate with other digital systems.

Under this statute, a person commits an offence, who fails without reasonable excuse to comply with a prohibition, requirement or restriction imposed on them by a direction. On summary conviction, they are liable to pay a fine.<sup>25</sup> However, as noted earlier, the Minister may only make regulations imposing obligations on the organisers of events or the owners of relevant premises. Regulations enacted under this section could not, therefore, give the police the opportunity to issue fines to individuals for failure to carry a passport, or

for failure to disclose their vaccination record to an event organiser. Amendment would be necessary if that power all were sought.

### **Penalties for forgery and fraud**

As outlined earlier above, there are bound to be attempts to create, sell and use forged passports or the passports belonging to others. It should be considered whether specific offences will need to be created to address this, or whether existing legislation (e.g., s.2 Fraud Act 2006) will be sufficient.

### **Enforcement**

There will have to be similar systems and standards of enforcement within each devolved administration. We can see that it might be quite a burden for the police, and we wonder whether the task might be given to local authorities. That may not be practicable because they may not have people with the training and resources. But clearly if a system of passports is to be introduced it must be ‘policed’ with reasonable effectiveness. Most people of course will not attempt fraud or other abuse. But some people, whether consumers or the providers of services, will not play by the book. There will be commercial incentives to wave people through. People will want access to events. Examples will have to be made when abuse is identified. Penalties will have to match the potential benefit to the abuser.

### **General legislative matters**

There will be a wealth of detailed matters to be addressed which would have to be covered by regulations. Whether the Coronavirus Act 2020 would have to be amended to extend the powers of the Secretary of State and Ministers of devolved administrations is not a topic for this paper. Legislation must of course comply with the Human Rights Act 1998 and the Equality Act 2010 which places non-discrimination obligations on public authorities, including Ministers in England, Scotland and Wales.<sup>26 27</sup>

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<sup>22</sup> Coronavirus Act 2020 sch. 22 part 2(6)(1)

<sup>23</sup> Coronavirus Act 2020 sch. 22 part 2(6)(2)

<sup>24</sup> Coronavirus Act 2020 sch. 22 part 2(5)(3), (6)(3)

<sup>25</sup> Coronavirus Act 2020 sch. 22 part 2(9)

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<sup>26</sup> Equality Act 2010 sch. 19

<sup>27</sup> Equality Act 2010 s.149(1)

## Link to the Contact Tracing App

We do not know how effective the contact tracing app is in practice, how well it works and what practical difficulties to use has thrown up. However, we offer the suggestion that consideration at least be given to linking that App with the digital passport. It would probably have to be a link because not everyone carries contact tracing App. But lessons learned with the contact tracing App, such as the practical difficulties of a centralised system holding an individual's data, should be used by those considering the launch of a digital passport. We know that the attempt to introduce a centralised contact tracing App proved

## EMPLOYMENT

Some employers are reported to be seeking advice on whether they can insist on mandatory COVID vaccinations for their employees. One such area is in healthcare and care home settings, where staff frequently come into contact with large numbers of potentially infectious and vulnerable people. Indeed, the National Care Association has sought a legal opinion on whether care home workers can be made to accept a vaccination as between 6–8% of workers in adult social care have refused an immunisation, with the figure being as high as 21% in some care settings.<sup>29</sup> <sup>30</sup> There is anecdotal evidence that workers in the front line in the NHS are not all willing to be vaccinated. Are such persons to be excluded from their places of work – care homes or hospitals? It seems unlikely.

Similarly, 'Pimlico Plumbers' are reported to have said they would seek to introduce a "no jab, no job" policy, though they subsequently indicated that none of their current workers will be forced to

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<sup>29</sup> Andrew Gregory, 'Care homes consider legal challenge to force their workers to take vaccine' *The Sunday Times*, 17 January 2021 <https://www.thetimes.co.uk/article/care-homes-consider-legal-challenge-to-force-their-workers-to-take-vaccine-0rwr2l2tb> accessed 26 January 2021.

<sup>30</sup> Sarah Knapton, 'Fifth of staff in some care homes refuse Covid vaccine believing they are "invincible"' *The Telegraph*, 17 January 2021 [www.telegraph.co.uk/news/2021/01/17/fifth-staff-care-homes-refuse-covid-vaccine-believing-invincible](http://www.telegraph.co.uk/news/2021/01/17/fifth-staff-care-homes-refuse-covid-vaccine-believing-invincible) accessed 26 January 2021.

unworkable in practice. It could only be made to work on Android systems and even then, phones had to be sufficiently up-to-date. Further there were considerable data protection issues arising with a centralised contact tracing App. Those interested in this topic should read the paper published by this Society last May, 'Contact Tracing – What Government must do to achieve take-up and secure privacy'<sup>28</sup>.

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<sup>28</sup> Guy Sandhurst QC, Benet Brandreth QC and Simon Murray. [https://bdf7311c-8582-4921-a35c-629fe604935c.filesusr.com/ugd/e1a359\\_637b0ffacf98456da1fb4dbb526c224e.pdf](https://bdf7311c-8582-4921-a35c-629fe604935c.filesusr.com/ugd/e1a359_637b0ffacf98456da1fb4dbb526c224e.pdf)

have a vaccination, and indeed that such a policy would be "an outrage".<sup>31</sup> However, that firm will make vaccinations a condition of employment for all new staff who are able to have the vaccine safely.<sup>32</sup> It is unclear to the authors whether such workers are employees or self-employed contractors. That may be material.

It is beyond the scope of this paper to consider in detail the ramifications of employment law and equality/anti-discrimination law. Suffice it to say we are of the firm view that it will be the exception rather than the rule for Vaccination to be a prerequisite of continuing or starting employment. Only government might be able to introduce an element of compulsion under primary legislation. It is not difficult to imagine what objections would be raised if such legislation were introduced. We do not foresee it in the near future.

An instruction to be vaccinated would not ordinarily be regarded as a 'reasonable direction' on the part of the employer, even within a hospital or care home.

Overall, therefore, given the likelihood of

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<sup>31</sup> Pimlico Plumbers, 'Covid Vaccinations: Nobody will be forced to have a vaccination by Pimlico' Pimlico Plumbers Blog, 14 January 2021 [www.pimlicoplumbers.com/blog/covid-vaccinations-nobody-will-be-forced-to-have-a-vaccination-by-pimlico](http://www.pimlicoplumbers.com/blog/covid-vaccinations-nobody-will-be-forced-to-have-a-vaccination-by-pimlico) accessed 26 January 2021.

<sup>32</sup> *ibid.*

consequent unfair dismissal claims, is unlikely that in most employment situations employers will be

able to insist upon their staff being vaccinated.

## VISITORS FROM ABROAD AND UK CITIZENS GOING ABROAD

Assuming things return nearer to normality, international travel will pick up on the tourist industry in this country (and abroad) will reopen.

Regulations concerning international travel may also be made under S.45B of the 1984 Act. Under s.45B. The power to make such regulations is not limited by their need to be proportionate, unlike domestic regulations. This section could undoubtedly therefore serve as a basis for the introduction of COVID passport requirements for international travel by air, sea and rail, and especially so if the Israeli 'green passport' scheme discussed above is approved and given international effect as suggested.<sup>33</sup>

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<sup>33</sup> Knesset News, 'Health Minister Edelstein: Other countries very enthusiastic about the idea of a "green passport" for those who get vaccinated' *The Knesset*, 4 January 2021 <https://main.knesset.gov.il/EN/News/PressReleases/Pages/press4121w.aspx> accessed 26 January 2021.

These provisions may give policymakers scope to impose requirements on non-residents entering the country from jurisdictions which have reached reciprocal international agreements with the United Kingdom. Given that over 95% of overseas visitors by air to the UK in 2019 arrived and departed by English airports, the Secretary of State would be well placed to open up the vast majority of the UK aviation industry with the powers under this Act.<sup>34</sup>

National requirements to hold a valid vaccination certificate could we believe be imposed on non-residents who wish to enter the United Kingdom.

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<sup>34</sup> Statista Research Department, 'International visits to the United Kingdom (UK) 2019, by airport' *Statista*, 26 November 2020 [www.statista.com/statistics/288271/world-visits-to-the-united-kingdom-uk-by-airport](https://www.statista.com/statistics/288271/world-visits-to-the-united-kingdom-uk-by-airport) accessed 26 January 2021.

## CONCLUSION

A comprehensive vaccination programme is the route to restoring national life. A well-designed COVID passport system could be a useful tool to incentivise vaccination.

The ending of lockdown restrictions, with their well-documented negative effects on economic activity, physical and mental wellbeing and educational achievement, requires a comprehensive programme of vaccinations. Properly designed and operative COVID passports may serve as additional encouragement for patients to get vaccinated, and reassurance that activities which have hitherto been prohibited now pose a far reduced risk.

Ministers should start now to address all the practical issues as well as the legislative ones which will be necessary. If work starts now there could be consultation on key issues in late spring/early summer with Legislation to follow. There is much to gain and little to be lost. The public would see that Government is taking practical steps to get the country moving.



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