

Mr Stephen Donnelly,
Minister for Health,
Department of Health,
50 – 58, Block 1,
Miesian Plaza,
Baggot Street Lower, Dublin 2,
D02 XW14

BY EMAIL

July 14, 2021

Dear Minister Donnelly,

The Irish Council for Civil Liberties is firmly opposed to the proposed Covid-19 vaccine passport system proposed in the draft Health (Amendment) (No.2) Bill 2021, calling for it to be scrapped.¹ We have also highlighted our serious concern over how the bill is being pushed through the Oireachtas without meaningful debate or pre-legislative scrutiny².

Our position is that the bill is discriminatory and has been developed without any meaningful consideration of equality, employment, privacy and data protection rights. The Data Protection Commission has also stated that questions concerning data protection remain unanswered³.

The European Commission did not carry out an impact assessment on its proposed EU Covid-19 certificate⁴, something which the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS) flagged in its joint opinion on the EC's proposal in March 2021. In the same opinion, the EDPB and EDPS stated that member states intending to use the EU Covid-19 certificate for domestic purposes *needed* to carry out a proper impact assessment "to avoid any risk of discrimination and to prohibit any retention of data in the context of the verification process"⁵.

¹ Irish Council for Civil Liberties: *ICCL calls for vaccine pass law to be scrapped*, July 13, 2021. Accessible here:

<<https://www.iccl.ie/news/iccl-calls-for-vaccine-pass-law-to-be-scrapped/>>

² Herrick, L. *Basic rights and Covid: Rushed law on indoor hospitality a recipe for disaster*, The Irish Times, July 14, 2021. Accessible here:

<<https://www.irishtimes.com/opinion/basic-rights-and-covid-rushed-law-on-indoor-hospitality-a-recipe-for-disaster-1.4619478>>

³ McNamee, D. *'Many questions' unanswered over data storage for indoor dining, DPC says*, Business Post, July 13, 2021. Accessible here:

<<https://www.businesspost.ie/hospitality/many-questions-unanswered-over-data-storage-for-indoor-dining-dpc-says-1680e3ac>>

⁴ Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), 2021/0068 (COD), Accessible here:

<https://ec.europa.eu/info/sites/default/files/en_green_certif_just_reg130_final.pdf>

⁵ European Data Protection Board and European Data Protection Supervisor, EDPB-EDPS Joint Opinion 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of

To that end, notwithstanding our position that the bill should be scrapped:

- The bill provides for several penalties but no specific penalty for “indoor operators” who may accumulate certificate data. Business owners should face a significant fine for this.
- 31AB (4) (h) refers to “indoor operators” having to adhere to as-yet-unpublished guidelines set out by “certain bodies”. The bill should specify that any guidelines should include guidelines set out by the Data Protection Commission (DPC) and the Irish Human Rights and Equality Commission (IHREC).
- 31AB (5) (c) (iii) states when making further regulations in respect of this bill, the Minister *may* consult the aforementioned certain bodies. The bill should specify that the Minister *must* consult with the DPC and IHREC.
- It’s unclear how this bill will affect people who have received vaccines other than those from Moderna, AstraZeneca, BioNTech/Pfizer, Janssen. Are *vaccinated* people who have received other vaccines not to be permitted indoors?
- The draft bill says that one of its purposes is to provide “for a robust and enforceable system of verification of the health status of certain persons, including vaccination or recovery status”. However, it’s still unclear how “indoor operators” will *verify* that the certificate or document belongs to the person holding/showing it?
- It’s also unclear how the bill’s definition of proof of recovery could be deemed robust: “Any form of written information or proof verifying, in such manner as may be prescribed, in relation to the person to whom the document is issued, that the person has recovered from Covid-19.”
- We note that in the preamble of the EU regulation underpinning the EU Covid-19 certificate⁶, it states (at No. 48) that:

“Member States may process personal data for other purposes, if the legal basis for the processing of such data for other purposes, including the related retention periods, is provided for in national law, which must comply with Union data protection law and the principles of effectiveness, necessity and proportionality, **and should contain provisions clearly identifying the scope and extent of the processing, the specific purpose involved, the categories of entity that can verify the certificate as well as the relevant safeguards to prevent discrimination and abuse, taking into account the risks to the rights and freedoms of data subjects.** Where the certificate is used for non-medical purposes, personal data accessed during the verification process are not to be retained, as provided for in this Regulation.”

In our view, the draft bill does not provide for the safeguards above.

interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), March 31, 2021, par. 24, Accessible here:

<https://edps.europa.eu/system/files/2021-04/21-03-31_edpb_edps_joint_opinion_digital_green_certificate_dcg_en.pdf>

⁶ Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021. Accessible here:

<<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0953&from=EN>>

- Article 16 of the same regulation provides for a report to the European Parliament and European Council on the application of the EU Regulation which will include, specifically, an assessment of the impact of the regulation “on the facilitation of free movement, including on travel and tourism and the acceptance of the different types of vaccine, fundamental rights and nondiscrimination, as well as on the protection of personal data during the COVID-19 pandemic”. The Irish legislation fails to provide for any such impact assessment.

Yours sincerely,



Liam Herrick,
Executive Director,
Irish Council for Civil Liberties