

Consultation submission from defenddigitalme to The Public Administration and Constitutional Affairs Committee (PACAC) Enquiry into Covid 19 Vaccine Certification

About defenddigitalme

defenddigitalme is a call to action to protect children's rights to privacy. We are teachers and parents who campaign for safe, fair and transparent data processing in education, in England, and beyond. We advocate for children's data and digital rights, in response to concerns about increasingly invasive uses of children's personal information. Funded by the Joseph Rowntree Reform Trust Ltd. <https://defenddigitalme.org/>

Contents

Recommendation	1
Context	2
Existing practice on proof of vaccination	2
The Impact on the Fundamental Rights of the Child	3
Children's rights in the digital environment	3
Necessity and proportionality	4

Recommendation

A comprehensive Child Rights Impact Assessment should be carried out of any policy (legal basis, data protection impact assessment including necessity and proportionality tests of any chosen method, assessment of the wider best interests principle and the Right to Be Heard, under Article 12) aligned with the framing of the UN Convention on the Rights of the Child.

Context

Although the Government has announced a review into introducing a Covid vaccine and status certificate system or “vaccine passports” and this PACAC inquiry suggests it will consider *“potential ethical, legal and operational issues and the efficacy and appropriateness of a certificate system”*; there is little definition of what that will look like.

The letter of Michael Gove to the Committee of March 10, 2021 suggests, *“COVID-status certification involves using testing or vaccination data to confirm in different settings that people have a lower risk of transmitting COVID to others.”*

His previous track record as Secretary of State for Education on recognising the rights of the child in national data policy has not respected children’s rights, and resulted in subsequent breaches of law, identified in the 2020 ICO audit of the Department for Education.¹

There is too little information about any concrete proposals in the consultation to adequately address specific risks or benefits of different approaches, however we address the issues from the perspective of the rights of the child who may be a *‘disproportionately impacted group.’*

Since children and younger adults may be some time away from becoming eligible in the UK for vaccination, and perhaps even later abroad, there may be a significant time period in which any proof of vaccination could be discriminatory towards young people and children.

However after that point, there are still considerations to be given to the rights of the child and how any system may be discriminatory, excluding through cost or lack of ability to participate on various grounds including choice. Comparisons are often made simplistically in the media between COVID vaccine passports and routine proof for travel of other vaccinations. It is therefore worth considering approaches to the proof of vaccination used for children.

The proof of a negative testing result is a separate question both of procedure, accuracy and legitimacy when the negative test status may become immediately invalid should the person come into contact with and contract the virus straight after the test.

Existing practice on proof of vaccination

In the UK, some residential boarding educational settings now require proof of meningitis vaccination² for enrolling. This carries some of the same characteristics of COVID-19 in so far as viral and bacterial meningitis will spread person-to-person through air droplets or contact.³ By getting vaccinated, adolescents are also protecting younger and older people who are

¹ Statement on the outcome of the ICO’s compulsory audit of the Department for Education (October 2020) <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/10/statement-on-the-outcome-of-the-ico-s-compulsory-audit-of-the-department-for-education/>

² See also in the U.S. Massachusetts law (MGL Ch. 76, s.15D)) requires new students at residential schools (e.g., boarding schools) with grades 9-12 and new full- and part-time, undergraduate and graduate students in degree-granting programs at postsecondary institutions (e.g., colleges) that provide or license housing to receive meningococcal vaccine. All new students at these institutions must provide written documentation from a medical professional. of having received meningococcal vaccine (within the last 5 years) at least 2 weeks prior to the beginning of classes, unless they qualify for one of the exemptions allowed by the law, including the choice of a waiver.

³ Meningococcal Groups ACWY (MenACWY) vaccine in the UK and Ireland Meningitis Research Foundation MenACWY vaccine overview <https://www.nhs.uk/conditions/vaccinations/men-acwy-vaccine/>

vulnerable to the infections.⁴ Such vaccine evidence does not require a centralised electronic database, but instead information from the child's medical records is extracted and explained in a letter by a trusted medical professional.

The Impact on the Fundamental Rights of the Child

Any solution must meet a range of individuals' needs and not assume an artificial and imbalanced trade-off and tension between adult and child rights.

Since solutions may involve commercial third party stakeholders, corporate accountability and the recognition and realisation of children's full range of rights in the digital environment are necessary.

"Adopted by the UN Committee on the Rights of the Child in February 2013, General Comment No. 16 addresses the state obligations regarding the impact of businesses on children's rights. It is one of the most recent pieces of international law available on business and children's rights. It includes guidance on the measures of implementation that are required to prevent and remedy violations of child rights by business actors, and ensure business enterprises carry out their responsibilities in the realisation of the rights of the child and encourage business to positively contribute to the realisation of these rights. The General Comment is guided by the principles of the CRC throughout: the best interests of the child (article 3(1)) ; the right to non-discrimination (article 2); the right of the child to be heard (article 12) and the right to life, survival and development (article 6)."⁵

The UN General comment on the Rights of the Child no. 14 (2013) to have his or her best interests taken as primary consideration (art. 3, para. 1) states that the full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity. It is a substantive right, a fundamental, interpretative legal principle and a rule of procedure.

Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

The impacts on children may have effects on family life as well as implications for settings with parental responsibilities, such as educational settings or children's social care.

⁴ FAQ 'Is it a risk to other people once someone has had the vaccine? '

<https://www.meningitis.org/meningitis/vaccine-information/meningococcal-groups-acwy-vaccine-in-the-uk>

⁵ General Comment No. 16 (2013) on State obligations regarding the impact of business on children's rights

<https://resourcecentre.savethechildren.net/library/general-comment-no-16-2013-state-obligations-regarding-impact-business-childrens-rights> | Save the Children

Children's rights in the digital environment

The UN Committee on the Rights of the Child adopted its General Comment No. 25 (2021) on children's rights in relation to the digital environment in March 2021, and set out that the rights of every child must be respected, protected and fulfilled in the digital environment. It reiterates some important considerations for this consultation.

The General Comment recognises that States parties should take all appropriate measures to protect children from risks to their right to life, survival and development.

Its general principles III.D(17) state that when developing legislation, policies, programmes, services and training on children's rights in relation to the digital environment, States parties should involve all children, listen to their needs and give due weight to their views. They should ensure that digital service providers actively engage with children, applying appropriate safeguards, and give their views due consideration when developing products and services.

This reflects the UN Convention on the Right of the Child Article 12, Children have the right to be heard. In this context, the views of children must be considered in the consultation.

Children also want to understand how their data are processed and restore fairness in systems, and power imbalances.⁶

Necessity and proportionality

Any lawful basis for data processing must also meet the tests of necessity and proportionality, not in layman's definitions, but under data protection definitions set out in law. The UK Information Commissioner Office guidance on the necessity test for data processing is very much aligned with EDPB read on necessity and proportionality.

*It says, "Many of the lawful bases for processing depend on the processing being "necessary". This does not mean that processing has to be absolutely essential. However, it must be more than just useful, and more than just standard practice. It must be a targeted and proportionate way of achieving a specific purpose. The lawful basis will not apply if you can reasonably achieve the purpose by some other less intrusive means, or by processing less data. It is not enough to argue that processing is necessary because you have chosen to operate your business in a particular way. The question is whether the processing is objectively necessary for the stated purpose, not whether it is a necessary part of your chosen methods."*⁷

Current proposals seen to date, rarely meet either test of necessity or proportionality due to the chosen methods of its design and delivery as opposed to the necessary and proportionate stated purpose which may be legitimate and achieved using privacy supporting methods and for example, do not require centralised national electronic databases.

⁶ Outlined for example in The Internet on our own Terms: how children and young people deliberated about their digital rights (Jan 2017) (Research by Coleman, S., Pothong, K., Vallejos Perez, E., and Koene, A. supported by 5Rights, ESRC, Horizon, University of Leeds and University of Nottingham). <https://casma.wp.horizon.ac.uk/casma-projects/5rights-youth-juries/the-internet-on-our-own-terms/>

⁷ The Information Commissioner Office guidance

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>