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CBI RESPONSE TO COVID-STATUS CERTIFICATION REVIEW – UK GOVERNMENT'S CALL FOR EVIDENCE

Summary

The CBI is the UK's leading business organisation, speaking on behalf of 190,000 businesses across all sectors, sizes, and regions of the economy. Together, our members employ around a third of the private sector workforce.

The CBI welcomes the opportunity to respond to the UK Government's call for evidence to inform the COVID- Status Certification Review. Since this call for evidence was launched on 15 March, the CBI has engaged extensively with its membership, assessing in detail the potential impacts of COVID-status certificates for businesses, their operations, and their wider supply chains.

With the UK's continued success in delivering the vaccine rollout programme at pace, alongside real-world evidence of the vaccine's effectiveness in reducing deaths and hospitalisations, hopes have strengthened of a return to some normality when it is safe to do so.

Set against this backdrop, this call for evidence is incredibly timely. Business recognises that assessing the relative merits and practical considerations of a prospective COVID-status certification is a key consideration in enabling a successful and irreversible lifting of restrictions.

On balance, while some businesses can see the potential value of COVID-status certificates in enabling certain types of activity to recommence, concerns persist on the operational practicalities of how a scheme would operate in practice.

Since the onset of the pandemic, the ability to operate safely has been at the heart of business thinking. Firms across the UK have rightly recognised the importance of keeping people safe, whether that be their employees, customers, or visitors and have made every effort to adapt their operations to do so.

Businesses remain committed to keeping employees and customers safe as the economy opens. They recognise the potential enabling qualities a COVID-status certification scheme could have in facilitating these efforts. Yet, in conversations with the CBI, firms have also raised reservations about the practicalities, societal fairness and need for such a scheme. Common reservations have centred on how a scheme would work in practice, potential for discrimination given some parts of society either haven't been offered – or are unable – to receive the vaccine, alongside wider concerns about the scheme's longevity and unknown efficacy of the vaccines reducing transmission over the longer-term.

Whilst the introduction of domestic COVID-status certification is a decision for government, businesses will be central to any successful rollout. Any decision to proceed with such a scheme must therefore be done with business deliverability as a key factor.

Businesses recognise that government must ultimately decide on whether to introduce a COVID-status certification scheme. Irrespective of their differing perspectives, CBI members are united in their belief that the introduction of any prospective scheme should be done in partnership with business and other stakeholders to maximise confidence and minimise confusion.

In addition, from a synthesis of the CBI's numerous conversations with businesses, industry believes any prospective COVID-status certification scheme should be:

1. **Voluntary and an additional tool in the UK's armoury to manage risk, underpinned by the scientific evidence.**
2. **Science-led and time-limited, with clarity on the scheme's purpose, timelines for implementation and review.**
3. **Based on proof of either vaccination or a negative coronavirus test result.**
4. **Aligned with existing COVID policies already at play such as testing, vaccinations and international travel.**
5. **Supported by business-specific legal counsel and help for monitoring and enforcement.**
6. **A solution that is simple to use, accessible to all and provides reliable, up-to-date information.**
7. **Consistent across all four nations of the UK.**

Businesses' views in depth

1. **Voluntary and an additional tool in the UK's armoury to manage risk, underpinned by the scientific evidence.**

   Since the onset of the pandemic, businesses have made every effort to make their workplaces and premises safe for employees and customers. The UK's notable progress on vaccines and their effectiveness regarding reducing deaths and hospitalisation have been signs of hope in the long-awaited return to some normality. However, with some unable or opposed to having the vaccine and its full impacts on transmission unknown **businesses can see the role of a voluntary COVID-status certification scheme to ensure the safe and sustainable reopening of the economy in the coming months.**

   Industry recognises that COVID-status certification will not be a panacea and urges government to learn from lessons to date on the pandemic response. This is increasingly vital in an environment where the health data is constantly changing, and the risk of new variants remains unknown.

   Businesses understand the need for a health-first approach to prevent any further lockdowns. To that end, **businesses accept that, at this point in time, any certification scheme may be in addition to existing measures such as COVID-secure workplace guidance, social distancing, and asymptomatic workplace testing.**

2. **Science-led and time-limited, with clarity on the scheme's purpose, timelines for implementation and review.**

   If it decides to introduce a certification scheme, **government must articulate clearly what problem this is trying to solve, which scenarios it will be applicable to, and what it will enable individuals, employers, and businesses to do.** Businesses understand the need to take a risk management approach to COVID-19. A certification scheme could be a new tool to manage this risk, but businesses will need clear guidance to understand how to account for it.

   However, certification will not be a long term economically viable solution. To that end, businesses need clarity on the timescales for the introduction, duration, and how success will be reviewed. Furthermore, the conditions for the continuation of a scheme should be clarified, following the 'data, not dates' approach set out in government's COVID-19 reopening roadmap. **Government must therefore outline key tests for measuring the effectiveness of such a scheme, including in upcoming pilots, as well as identifying how outcomes from the social distancing review will impact implementation.** This should also include clarity on the availability of financial support for businesses impacted by capacity constraints as a result of government policy.

Depending on the type of business and nature of workplace settings they operate in, different firms have different views. Some see the benefit of COVID-status certification from a customer confidence perspective, for instance if services are being offered in people's homes like installation or repairs; for those businesses that have remained open during the recent lockdown, it is seen as another tool alongside measures such as asymptomatic workplace testing, to improve safety and minimise risk. Meanwhile, for those due to reopen, like hospitality and some retail, there are greater reservations due to the increased onus placed on these sectors to monitor and enforce such schemes. Therefore, **any certification scheme should account for the differences in workplace settings and identify if it would apply across employees, customers, and visitors.**

3. **Based on proof of either vaccination or a negative coronavirus test result.**

    Taking from lessons learnt to date, businesses know that any successful implementation of coronavirus policies have rested on close consultation with staff and, where relevant, trade unions. The introduction of a COVID-status certification scheme would be no exception, given the sensitivity of vaccinations and testing data and how it interacts with employment law and most importantly people's fundamental human rights; for private life and freedom of thought, belief, and religion. Furthermore, businesses are conscious that any a scheme must be introduced in a way that does not create a two-tier society, entrenching existing inequalities and discriminating directly or indirectly against employees and customers. **Therefore, business agrees that any certification scheme should be based on data from proof of either vaccination or a negative coronavirus test.**

4. **Aligned with existing COVID policies already at play such as testing, vaccinations and international travel.**

    COVID-status certification cannot be viewed in isolation. It will interact with a number of other areas of existing COVID-19 policy as well as the upcoming reviews into social distancing and international travel. Joined-up policy across these areas will ease the burden on businesses, prevent industry and customer confusion, and reduce inconsistencies in implementation that might harm the public health response to the pandemic.

    Businesses agree that any scheme should be based on either proof of vaccination or negative coronavirus test result, to accommodate for every individual in society and their circumstance. Therefore, the availability of both vaccinations and testing will be fundamental to the rollout of any certification scheme. Whilst the administration of vaccines is currently centralised through the NHS, this is more complex for testing, where there is now a vast ecosystem to access asymptomatic testing. As part of this the role of business has increasingly developed, with the provision of workplace testing. Recent survey data from the CBI Growth Indicator, conducted between 24th February and 16th March, revealed the importance of central and local government programmes for those firms offering workplace testing. Therefore, given the importance of testing as part of any certification scheme **the government should clearly outline the long-term role and support for funding of coronavirus testing in the economy. This should include the need for workplace testing and reference to how this would link with any certification scheme.**

    Furthermore, businesses expect close coordination of any domestic scheme with an internationally coordinated system of vaccine and testing certificates. This will not only ease confusion for businesses, the public and forthcoming overseas visitors but help to promote compliance as restrictions ease. For example, any information generated for a domestic COVID certification scheme should be easily verifiable for the purposes of an international travel certificate and likewise any domestic system needs to be able to recognise a vaccine certificate from outside the UK. **As part of developing a COVID certification scheme the government should clearly outline how it will recognise other vaccinations that may not be administered at scale within the UK.** The CBI has already submitted evidence to the Global Travel Taskforce.

5. **Supported by business-specific legal counsel and help for monitoring and enforcement.**

Throughout the pandemic business has been a key partner and vehicle for implementing government pandemic policies. The foundations of its successful role have been due to strong employer-employee partnerships and an unwavering commitment to keeping people safe and the economy going, however this has not been without challenge. Too often business has been left to perform an additional role of monitoring and enforcing measures from face-coverings to the collection of details for contact tracing. In the absence of support for enforcement this has placed strain on both employees who are left on the receiving end of confrontations and on employers needing to fulfil their duties to protect staff. Some firms already report that customer tolerance of health and safety protocols like mask-wearing is materially dropping among those who have been vaccinated, which is putting staff in a difficult position when trying to encourage customers to continue to observe government-mandated protocols.

Any certification scheme would place yet another requirement on businesses and their employees to monitor and enforce. Therefore, if the rollout of a scheme is to be successful, **the government should be clear on the legal grounds for its implementation and outline if will be supported with police backed enforcement if required.**

It is important to understand the legal duties already placed on employers as part of the Health and Safety Act which require them to do "everything reasonably practicable" to avoid exposing their employees or non-employees to risks to their health and safety. Firms agree that any scheme should not be seen as a barrier preventing people from working or customers from entering premises or engaging in activities without it. However, with coronavirus still at large, an employer will need to assess what risk or safety enhancement is being achieved through a COVID-status certification and by extension vaccinations and testing as part of workplace risk assessments. However, at present there is no government guidance that addresses this. Therefore, as part of any COVID certification scheme **the government should be clear on the risk or safety enhancement it believes is achieved through vaccinations and testing and consequently provide clarity on the types of workplaces or activity where a certification scheme is envisaged to have a positive benefit and for what reasons**.

To date, in the absence of guidance with clear legal status, businesses have faced an increasing number of legal challenges around voluntary versus mandatory health and safety practices. The introduction of any COVID-status certification scheme must be accompanied by detailed business guidance that has a clear legal status, so that businesses are able to understand their obligations and apply a scheme fairly and consistently. In addition, to help firms understand what a valid certificate looks like and prevent fraud, **guidance should address questions such as whether an employee needs to have proof of one or two doses of the vaccine, whether testing data from Lateral Flow Devices (LFDs) is sufficiently accurate, and how long any result would remain valid.**

6. **A solution that is simple to use, accessible to all and provides reliable, up-to-date information.**

A scheme with overly burdensome verification requirements is likely to be unfeasible to practically implement as well as use, for example by creating onerous additional staffing requirements. Businesses should have access clear and up to date information without having to make judgement calls about what is and is not acceptable. **Firms would welcome the use of technology solutions, for example QR codes**. Solutions should be interoperable, allowing different systems to work together to exchange usable data – which could again support alignment between domestic and international certificates, including domestic passports that have been issued in other countries (such as Israel's 'green pass').

Furthermore, businesses agree that any scheme should be accessible to all and therefore not limited to technology-based solutions only. **To that end any COVID-status certification scheme**

should also provide a paper-based alternative that utilises the same vaccination and testing information, is widely recognised and supported by a clear process to keep it up to date.

7. **Consistent across all four nations of the UK.**

Industry appreciates the nature of devolved policymaking, however inconsistencies between the four administrations' COVID-19 strategies have placed an additional strain on business operations. Greater coordination across the four governments will allow businesses operating across the UK to take a consistent approach towards customers and employees, as well as aid compliance. Therefore, given the complexities of COVID-status certification, **the Government should work in collaboration with devolved administrations to ensure that wherever possible the UK can identify a common approach towards COVID-status certification.** This should include recognising the same testing and vaccine data as part of any technology solution or paper-based alternative.

<u>**Annex**</u>

Beyond principles, businesses have specific concerns across areas from employment law to enforcement where government support and guidance would be critical.

The balance of opportunities and risks of a COVID-status certification scheme would likely depend on how it is introduced. Government support and guidance would be needed across a number of areas, with business raising specific concerns about how certification could be implemented in line with their legal employment and data protection obligations.

Operational / delivery considerations

- **COVID-status certification requirements should not be prohibitively burdensome for businesses or customers.** Government should learn from the lessons of testing for international travel, where the complexities of pre-departure testing requirements for travellers have been a barrier to reopening. Another prime example is the introduction of NHS Test and Trace App, where there was initial confusion as to which businesses needed to collect contact details and for customers, who in a party was expected to give details.
- Businesses stress the importance of a system where testing is well-integrated, to ensure ease of use for firms and individuals and prevent discrimination against those who are unvaccinated.
- **Any new policy will need to be monitored and enforced, placing an additional burden on business operations and risking employee safety.** The staffing levels needed to train employees and check people's certification could prove costly or even unfeasible, such as for smaller events that operate on small margins or venues with contactless entry. Employers do not want to expose staff to abusive behaviour if they are responsible for 'policing' particular workplaces and would value clarity on whether the police will back enforcement if certification is introduced.

Considerations related to responsibilities or actions of employers under a potential scheme – employment law and equalities considerations

- **Rather than mandating testing for certain businesses, government should introduce clear, specific guidance on the workplace settings in which COVID-status certification would have the most positive benefit.** An employer would need to assess what risk or safety enhancement is being achieved through the use of a COVID-status certificate, and as part of that determine which parts of the workplace would benefit (whether through type of work or physical location) in consultation with health and safety representatives and trade unions.
- Guidance would support businesses to assess whether to introduce a scheme and for whom, rather than forcing businesses to make value judgements. Government should learn from the lessons of workplace testing guidance. BEIS advice that *'an employer's options for enforcing [a mandatory testing requirement] will rest on the specific circumstances at hand'* is seen as vague and confusing by many businesses, with divergent practices leading to a higher risk of legal claims as well as potentially damaging employee and customer confidence. This guidance should be brought into line with any certification scheme that uses testing and vaccination data.
- In most cases, businesses would be unable to mandate that employees receive a vaccine without infringing UK employment law. A simple 'no jab, no job' policy will almost always be illegal. Basing status for certification on testing too will broaden the situations in which certification could become a risk management tool.
- Employers have a duty to consider alternative ways to manage the risks of COVID-19 at work. Because firms must do 'everything reasonably practicable' to avoid exposing employees and non-employees to health and safety risks, it is likely that employers would have to at least consider the relative merits of a certification scheme to satisfy this obligation. Most businesses who would consider it, view COVID-status certification as an optional additional tool not a replacement of other safeguards, to help mitigate health and safety risks. They consider this cautious approach because of uncertainty about the extent to which certification mitigates the risk of COVID-19 at work. Guidance is needed to help them understand how to account for certification in workplace risk assessments.

- **Government guidance should explicitly address issues around discrimination.** Businesses are concerned that they could face an increase in indirect discrimination claims against them following the introduction of a certification scheme. They also believe there is a real risk of unjustified indirect discrimination against employees who haven't had the vaccine, including for ethical or medical reasons (such as pregnancy or underlying health conditions), if they cannot justify it as a proportionate means of achieving a legitimate aim. This is particularly the case if certification is introduced before all adults have been offered a jab.

Considerations related to responsibilities or actions of employers under a potential scheme – customers and clients

- **Businesses obligations also extend towards customers and clients and therefore any guidance should also account for these interactions.** Given businesses engage in a range of interactions it will be important that any guidance also refers to these, in a similar way to current COVID- Secure guidelines for workplaces provides guidance on managing customers, visitors and contractors.

Ethical considerations

- **A COVID-status certification scheme should use both testing and vaccine data.** Businesses have some ethical concerns regarding the implementation of a certification scheme. Testing and vaccination are sensitive topics that potentially impact an individual's fundamental human rights to respect for private life and freedom of thought, belief, and religion. Industry is clear that it is an employee's choice to be vaccinated, which has also led to some firms ruling out the introduction of certification that uses vaccine data alone.
- **Government cannot create a two-tier society with certification.** Firms also caution against a scheme that creates a two-tier society, entrenching existing inequalities. For example, although businesses support a technical solution like an app, they recognise that not everyone will have a smartphone, with the need for a paper-based solution too.

Privacy considerations

- **A certification scheme must respect the UK's data protection regime.** Data privacy and security concerns are top of businesses' minds. Companies recognise the importance of trust and strong privacy standards when it comes to personal data, in particular health data, which requires more protection due to its sensitivity.
- **Government or the Information Commissioner's Office (ICO) would have to clarify whether businesses should keep a record of individuals' COVID-status certification,** with additional safeguards needed to ensure that data is processed lawfully, fairly, and transparently.
- **The amount of data shared should also be minimised.** For example, an 'unconfirmed' rather than 'negative' status for those who aren't confirmed as being at a lower risk of transmitting the virus.
- **The balance between validity and privacy must be carefully weighed up.** More broadly, businesses have raised the concern of certification fraud, as has already been seen in the context of testing for international travel. The balance between user privacy and the need for a reliably authentic certificate would need to be carefully weighed, with an evaluation of privacy options if a certificate were connected to someone's NHS data.