



12th May 2021

Formal Advice

Covid Status Certification - Considerations for Children and Young People

I welcome the opportunity to provide further information on children's rights in the context of Covid Status Certification for those aged under 18 years old. I am pleased to see that considerations as to the impact of decisions on the rights of children and young people and indeed adults are being embedded at the beginning of the decision-making process to allow for a human rights-based approach to decision making.

Human rights guarantee basic freedoms and meet the basic needs of all humanity, underpinned by respect for human dignity. Human rights are binding on the Government and on public authorities at all levels in Jersey, and provide a strong ethical framework for planning, decision-making and action.

Children are entitled to their human rights, including being able to access and exercise their rights. Children's rights are set out in international treaties, including the European Convention on Human Rights (ECHR). Children's rights are entitlements, they are not optional. Children aged 0-17 years are given special human rights protection by the United Nations Convention on the Rights of the Child (UNCRC).

The UNCRC guiding principles provide a framework for decision making when considering the issue of Covid Status Certification for those aged under 18 years old. These are:

Best Interest (Article 3)

The best interest of the child must be a top priority in making any decision about Covid Status Certification along with overall public health considerations.

Protection from discrimination (Article 2)

Whilst the proposals for Covid Status Certification determine a different process for children aged 11-17 years, the proposals are a pragmatic and proportionate response to the current situation regarding the vaccination of children and young people.

Right to life, survival, and development (Article 6)

Any measures must not compromise the child's right to survive and develop and must not put a child's health at risk. There needs to be careful consideration to balance the right to life and survival with children's other rights.

Listening to the views of children and young people (Article 12)

It is important that children and young people's right to be involved in decisions which affect them are respected. The UNCRC have highlighted that the Government is required to ' [P]rovide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic. Children should understand what is happening and feel that they are taking part in the decisions that are being made in response to the pandemic.'¹ This makes it clear that the onus is on the Government to ensure meaningful engagement with children on this issue.

Through the joint survey with my Office and the Government of Jersey we have heard strongly from children and young people about their concerns. They have clearly articulated concern for their health and the health of others during the pandemic and ask that they be kept safe from harm.

Consent and Capacity

In order to be able to consent, children and young people must be fully informed and so there is a need for child-appropriate resources and information to support decision making. This principle is reflected in the Data Protection (Jersey) Law 2018, which places an emphasis on informed consent as being true consent.

Under the Consent to Medical Treatment (Jersey) Law 1973, those aged 16 years and over can consent to medical treatment.

Covid testing is an invasive procedure and children must be able to withdraw consent and consideration of this scenario needs to be carefully considered.

Lawful, Necessary, and Proportionate

Having considered the four general principles of the UNCRC the next step is to consider if the proposals are lawful, necessary, and proportionate. Limitations on rights must be lawful, necessary, and proportionate. However, any decisions must not compromise the care, support, and protection of children. I am satisfied that the Option 3 proposal satisfies the expectations of the four general principles and they are lawful, necessary, and proportionate.

Child Rights Impact Assessment

A child rights impact assessment (CRIA) is an important measure for monitoring implementation of the UNCRC in a way that further promotes the visible integration of children's rights in decision-making. However, the urgency of decision making around Covid Status Certification would mean any CRIA would be at this stage a tick box exercise. Following our discussion and a review of the STAC Briefing Paper dated 10th May 2021, I am satisfied that there has been an examination of the potential impacts on children and young people of proposals. I would suggest that a CRIA be completed for any roll out of vaccinations to 12–15-year-olds. My Office would be pleased to work with the Government on this.

¹ See paragraph 11, available at <https://www.childcomjersey.org.je/publications/international/un-committee-on-the-rights-of-the-child-covid-19-statement/>

I would be pleased to provide further advice and to support any external communications to provide reassurance to children, young people, and their families.

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