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Donald Cameron MSP
Convenor
Covid-19 Committee
The Scottish Parliament
Edinburgh
EH99 1SP

15 September 2020

Dear Donald,

I wanted to write to the Covid-19 Committee following my appearance on 2 September to provide further information and clarity on some of the issues raised.

Collection of customer details in hospitality settings

The Committee expressed an interest in understanding what guidance was available for business owners to ensure they could undertake their duties in line with data protection legislation. Updated guidance for the hospitality sector was published on 14 August, including on the collecting of visitor contact in support of Test and Protect. This guidance is available here – <https://www.gov.scot/publications/coronavirus-covid-19-tourism-and-hospitality-sector-guidance/pages/collecting-customer-contact-details/>.

The section entitled Registration with the Information Commissioner's Office advises premises on requirements on premises to comply with the regulations. It also links to the ICO's detailed guidance on collecting customer and visitor details for contact tracing.

The Committee also asked about the purposes that businesses can use collected data for. The Scottish Government has published a template privacy notice alongside the guidance linked above, setting out the terms of how data should be gathered, stored, used and disposed of. The privacy notice is how businesses will demonstrate compliance with Article 13 of the General Data Protection Regulation (GDPR) that sets out what information needs to be provided when data are collected from the data subject (visitors to the premises).

The privacy notice can be viewed online and should also be downloaded and made available in each establishment, and online if premises have a website, so that customers providing details are informed as to what will happen with their data.

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The privacy notice sets out the purpose for which the data is being collected, what data is being collected, the lawful basis for doing so, how long the data will be retained, what rights customers have over this data and how to complain to the establishment and the ICO if there is a concern.

The Committee raised the issue of certain individuals and demographics being unlikely to provide contact details via smart phones and suggested that some venues are only providing a digital means of data collection. The guidance notes that a paper record of visitor contact details is perfectly acceptable as long as it kept out of sight and stored securely. Additionally, it is for the premises to ensure the collection of the relevant minimal contact details, and so if a visitor to the premises is unable or unwilling to provide details via a digital app on a smartphone, it is for the premises to offer a means by which to record details as per the legal requirement.

Monitoring compliance was raised by the Committee when I gave evidence recently. Members of the public who have concerns about an establishment not complying with the regulation are advised to contact the relevant Local Authority's Environmental Health Department, who can investigate with the venue accordingly. A failure to have the required arrangements in place is punishable by a Fixed Penalty Notice under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, and ultimately a continuing failure could be enforced by repeated fines of up to £960.

International students arriving in Scotland

During the Committee session, some questions were asked about the return of further and higher education and the arrival of international students who would be studying in Scotland from September onwards.

Guidance on further and higher education is published here - <https://www.gov.scot/publications/coronavirus-covid-19-universities-colleges-and-student-accommodation-providers/> - and sets out the Scottish Government's approach to a wide range of matters concerning both domestic and international students and educational establishments.

I hope that the Committee find this further information helpful and I look forward to providing further evidence on more recent Regulations in due course.

Yours sincerely,

MICHAEL RUSSELL

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