

500,000 Reasons For Data Controllers To Be Careful.

The Ministry of Justice has issued a consultation paper to assess the appropriateness of fines of 10% of annual turnover, up to a maximum of £500,000, for serious breaches by data controllers of any of the eight data protection principles, where personal data:

- must be processed fairly and lawfully;
- must be obtained only for one or more specified and lawful purposes and not further processed in any manner incompatible with that purpose or those purposes;
- must be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed;
- must be accurate and where necessary kept up to date;
- must be processed in accordance with the rights of data subjects under the Act;
- processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes;
- must not be transferred to a country or countries outside the European Economic Area unless that country ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data; and
- appropriate security measures must be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

The Information Commissioner will be able to impose fines on those Data Controllers where: they seriously contravene any of the Act's eight principles; and such a contravention is likely to cause significant damage or distress to an individual; and either the actions of the Data Controller were either deliberate or reckless; or they knew – or ought to have known - there was a risk such a breach would occur and would cause damage or distress, and they failed to take reasonable steps to prevent this.

In draft guidance, the Information Commissioner's Office sets out the reasoning behind the new monetary penalties and the circumstances in which they can, and how they will be imposed. The ICO has, however, emphasised that "the purpose of a monetary penalty notice is not to impose serious financial hardship on a responsible data controller" and before handing out fines, he will take into account the sector within which the data controller operates, the size and financial resources of the business.

The consultation period for this proposal ends on 21 December 2009 and the new power for the ICO is expected to come into force in April 2010.

For further information, please contact David Flint, Partner and head of MacRoberts Technology Media & Communications Group at david.flint@macroberts.com

This article featured in the Winter 2010 issue of Business Matters

[See our website for full Copyright notice and Disclaimer.](#)

© MacRoberts LLP 2009