

## The Data Protection Act

The Data Protection Act 1998 ('DPA') applies to the "processing" of "personal data". This means that practically every business operating within the UK which holds information about individuals who can be identified from that data (whether these individuals be employees, customers or anyone else) is affected by the DPA. Since breaching the DPA may result in both civil and criminal liability, not to mention adverse publicity, no business can afford to ignore its data protection obligations.

The DPA imposes a large number of stringent obligations on those who process personal data. These obligations require that data must be processed fairly and lawfully, be obtained only for specified lawful purposes, not be excessive in relation to the purpose for which it is processed, be processed accurately, be kept for no longer than is necessary, be processed in accordance with the rights of the individual, not be

transferred outside of the EEA (unless the receiving country ensures an adequate level of data protection) and there must be appropriate technical and organisational security measures in place to prevent unauthorised or unlawful processing of the data.

Up until now the Information Commissioner's Office (ICO), which is the independent body set up to uphold information rights in the public interest, has had limited powers of enforcement. However, following a series of high profile DPA breaches including the HM Revenue and Customs' loss of a CD containing 25,000,000 child benefit records and the theft of a Marks and Spencers' laptop containing the personal pension details of 26,000 employees, the Ministry of Justice has issued a consultation paper proposing maximum fines of up to £500,000 for "serious" breaches of the DPA which cause "substantial damage and distress".

Unless changes are made as a result of the

current consultation, the ICO will have the power to levy such fines from April 2010. Although the ICO will take into account the seriousness of the breach and the recourses available to the data controller, it is clear that the ICO intends to take action to try and curtail the frequency at which serious breaches to the DPA are occurring.

It is therefore extremely important that businesses ensure that all personal data is properly encrypted. This is especially true in the case of portable devices such as laptops and data sticks. Businesses should also review their data protection policies general to reduce their level of exposure to the potential new penalties.

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