

## NEW EUROPEAN MEASURES TO ALLOW FINES OF UP TO 5% OF WORLDWIDE TURNOVER

The long awaited update to data protection legislation within the European Union is expected to be published in January 2012. It is anticipated that this will include a dramatic increase in the ability to fine for breaches of data protection legislation, of up to 5% of an organisation's worldwide turnover. The European Union has wanted to increase the punishment for breaches of data protection legislation, and the Information Commissioner's Office (the body that enforces the Data Protection Act in the UK) has mirrored this approach with increased fines being levied over the past 12 months. Recent fines have included Surrey County Council fined £120,000 in June 2011 and Hertfordshire County Council fined £100,000 in November 2010. The current maximum amount the ICO can fine is £500,000.

In an attempt to stem the growing number of data breaches, particularly those breaches occurring online, as was highlighted by Sony PlayStation earlier this year, there are suggestions that a similar approach as is taken with competition legislation will be adopted by the European Union. Under current competition regulations, fines of 10% of worldwide turnover can be imposed. It is proposed that for data breaches, fines of 5% of worldwide turnover should be levied.

The new rules, if adopted, would allow the European Union to fine organisations **with a subsidiary** within the European Union.

Other measures likely to be included in the update:

- A requirement to notify within 24 hours both the relevant data protection authorities and the affected parties of a data breach;
- Organisations with more than 250 employees to have dedicated staff to deal with data protection issues; and
- A "right to be forgotten". This would allow an individual to request that an organisation (such as a social media site) to remove all data provided by the individual (including all postings) even where the individual had previously consented to such data being published.

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If you would like further information about the Data Protection Act 1988, the likely impact of the proposed changes or if you would like to discuss any issue surrounding the Data Protection Act 1988, please contact your Brown Rudnick lawyer or one of the following lawyers:

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