

The Corporate Manslaughter and Corporate Homicide Act 2007

(The following information concerning the Act is taken from the guide to the Act published by the Ministry of Justice in October 2007)

This Act sets out a new statutory offence of corporate manslaughter (in Scotland, corporate culpable homicide) under which an organisation falling within the terms of the Act is guilty of an offence if the way in which it organises or manages its activities result in a death and amount to a gross breach of a relevant duty of care owed to the deceased. The Act received the Royal Assent on 26 July 2007 and came into effect on 6 April 2008. It applies across the UK.

The roots of the legislation can be traced back to the Law Commission's 1996 report 'Legislating the Criminal Code: Involuntary Manslaughter' (Law Com 237) which provided the basis for the Government's consultation paper in 2000 'Reforming the Law on Involuntary Manslaughter: the Government's Proposals'. A draft Corporate Manslaughter Bill (Cm 6497) was published in March 2005.

Prior to the Act, organisations could only be convicted of manslaughter if a 'directing mind' of the company was also personally liable: the identification principle. This operated to exclude large organisations from liability. Liability is now assessed on a wider basis.

The offence will continue to be reserved for the very worst cases of corporate mismanagement leading to death. The offence is concerned with the way in which an organisation's activities were managed or organised and whether an adequate standard of care was applied to the fatal activity. A substantial part of the failing must have occurred at a senior management level i.e. those making significant decisions about the organisation or substantial parts of it including those carrying out HQ functions as well as those in senior operational management roles. The identification of senior management will depend on the nature and scale of the organisation's activities. Apart from directors and similar senior management positions, roles likely to be considered include regional managers in national organisations and managers of different operational divisions.

The Act applies to:

- Companies incorporated under the Companies Acts or overseas
- Other corporations including:
 - Public bodies incorporated by statute: Local Authorities, NHS bodies and a wide range of non-departmental bodies;
 - Organisations incorporated by Royal Charter;
 - Limited liability partnerships
- All other partnerships and trade unions and employer's associations if the organisation is an employer
- Crown bodies such as Government departments
- Police forces

It does not apply to individual directors, senior managers or other individuals and it is not possible to convict an individual of assisting or encouraging the offence: s.18.

Prosecutions will be brought against organisations which will be represented in court by their lawyers; individual directors, managers and employees may be called as witnesses.

In the case of partnerships, the prosecution will be brought in the name of the firm and any fine will be payable from partnership funds meaning that partnerships will be dealt with in a similar manner to companies and other incorporated defendants. A parent company cannot be convicted under the Act for failures within a subsidiary, but the new offence applies to all companies and other corporate bodies operating in the UK, whether incorporated in the UK or abroad. The new offence will also apply to charities and voluntary organisations which are incorporated or which operate as any other form to which the Act applies.

The Act applies across the UK and the new offence can be prosecuted if the harm occurs:

- In the UK
- In the UK's territorial waters in incidents involving commercial shipping or leisure craft
- On a British ship, aircraft or hovercraft
- On an oil rig or other offshore installation already covered by UK criminal law

The Act will not apply to British companies etc responsible for deaths abroad.

The organisation concerned must have owed a 'relevant duty of care' to the victim in respect of systems of work and equipment used by employees, the condition of worksites and other premises occupied by an organisation and to products or services supplied to customers. These duties are already owed in the civil law of negligence. Relevant duties are set out in section 2 and include:

- Employer and occupier duties
- Duties connected to:
 - Supplying goods and services
 - Commercial activities
 - Construction and maintenance work
 - Using or keeping plant, vehicles or other things.
- Duties relating to holding a person in custody.

Statutory duties owed under health and safety law are not relevant duties for the offence although there is a significant overlap between these types of duty. It is for the judge to decide whether a relevant duty of care is owed: s. 2(5). In certain circumstances, however, where the person cannot be sued under the law of negligence, the offence will apply where a statute has replaced liability with a 'no fault' scheme for damages and also where an organisation is engaged jointly in unlawful conduct with another person (e.g. illegal employment) and where a person has voluntarily accepted the risks involved: s. 2(4) & (6).

There are statutory exemptions which mean that the offence will not apply to deaths connected with the management of particular activities. The exemptions are of two types: comprehensive and partial. Comprehensive exemption applies to –

- Public policy decisions (s.3(1) e.g. strategic funding decisions and matters involving competing public interest but not decisions about how the resources were managed.
- Military combat operations including potentially violent peacekeeping operations and dealing with terrorism and violent disorder including support and preparatory activities and hazardous training: s.4.

- Police operations dealing with terrorism and violent disorder including support, preparatory activities and hazardous training: s.5(1) & (2).

For partial exemptions, the new offence does not apply unless the death relates to the organisation's responsibility as employer or as an occupier of premises. These include –

- Policing and law enforcement activities: s.5(2).
- Emergency responses of:
 - Fire authorities and other emergency response organisations;
 - NHS trusts (including ambulance trusts) – not including duties of care relating to medical treatment other than triage decisions;
 - The Coastguard, Royal National Lifeboat Institution and other rescue bodies; the armed forces.
- Carrying out statutory inspection work (s.3(3)): child-protection functions or probation activities: s.7.
- The exercise of 'exclusively public functions' (s.3(2)) –
 - Functions carried out by the government under prerogative powers i.e. acting in a civil emergency; and
- Functions that by their nature cannot be independently performed by a private body but must require statutory or prerogative authority i.e. licensing drugs or conducting international diplomacy.

Private bodies carrying out public functions are broadly in the same situation in this respect as public bodies.

Organisations convicted of the offence can receive –

- A fine for which there is no upper limit. In England and Wales the Sentencing Guidelines Council is expected to establish a final guideline by the autumn of 2008. Fines need to reflect the relative size of the offender and the scale of the offending. Fines are expected to be on the scale of the following and even higher –
 - 1999 Great Western trains was fined £1.5m arising from the 1997 Southall train crash
 - 2003 Thames Trains was fined over £2m and Network Rail £4m arising from the 1999 Ladbroke Grove train crash
 - 2005 Transco was fined £15m arising from the fatal explosions at Larkhall in 1999
 - 2006 Network Rail was fined £3.5m and Balfour Beatty £7.5m arising from the derailment near Hatfield in 2000
- A publicity order requiring it to publicise the conviction and details of the offence as specified by the court. These orders will be brought in when supporting guidelines are available which is expected to be the autumn of 2008.
- A remedial order requiring the organisation to address the cause of the fatal injury. This can only be made on the application of the prosecution accompanied with the proposed terms of the order after consultation with the appropriate regulatory authority or authorities: Health and Safety Executive, Office of Rail Regulation, Food Standards Agency or local authority. Organisations failing to take the action set out in the order are liable for prosecution and an unlimited fine can be imposed on conviction.

In England and Wales and in Northern Ireland, the consent of the relevant Director of Public Prosecutions is needed before a case can be taken to court. In Scotland all prosecutions are initiated by the Procurator Fiscal. Subject to this, in England and Wales

and in Northern Ireland individuals will be able to bring a private prosecution for the new offence.

In England and Wales and in Northern Ireland, it is no longer possible to bring proceedings for gross negligence manslaughter against a company or other organisation to which the offence applies. This part of the common law is abolished: s.20. In Scotland, the common law will continue in force and the Procurator Fiscal will determine the appropriate charge to be brought according to individual circumstances.

(For more information on the Act visit: www.corporate-manslaughter-act.co.uk)