


THE CONSEQUENCES OF THE CORPORATE HOMICIDE ACT

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Corporate Manslaughter and Corporate
Homicide Act 2007


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Summary 

3 main points:

- The new offence
- Penalties
- What should you be doing?

The new offence 

- Introduces new manslaughter offences for organisations
- No "directing mind" hurdle
- No new offence for individuals
- Penalty – unlimited fine, remedial or publicity orders
- Came into force on 6 April 2008

The new offence



The offence is committed if:

- *“The way in which [the organisation’s] activities are managed or organised:*
 - (a) *causes a person’s death;*
 - (b) *amounts to a **gross breach** of a relevant duty of care owed by the organisation to the deceased”*

and

- *“The way in which its activities are managed or organised by its **senior management** is a substantial element in the breach”*

The new offence – who are senior management?



- Senior management, in relation to an organisation, means the persons who play **significant** roles in:
 - (a) The making of decisions about how the whole or a **substantial** part of its activities are to be managed or organised; or
 - (b) the actual managing or organising of the whole or a **substantial** part of those activities

The new offence – who are senior management?



- Think about job titles
- Think about job descriptions
- What are the health & safety elements ?
- What are the training implications ?

The new offence – what is a relevant duty of care?



Duties owed by an organisation under law of negligence - including a duty owed:

- to employees;
- as occupier of the premises;
- in connection with
 - The supply of goods or services
 - The carrying on of any construction or maintenance operations
 - The carrying on of any other activity on a commercial basis
 - The use or keeping of any plant, vehicle or other thing

The new offence – what is a gross breach?



- If the conduct alleged amounts to a breach of that duty and *“falls far below what can reasonably be expected of the organisation in the circumstances”*
- Matter for the jury

The new offence – factors to be taken into account by a jury



- The jury **must** consider the failure to comply with any health & safety legislation relating to the breach and
 - how serious the failure was
 - how much of a risk of death it posed
- The jury **may** consider:
 - the extent of any attitudes, policies, systems or accepted practices likely to have encouraged such a failure or have produced tolerance of it
 - any health & safety guidance relating to the alleged breach (ACOP's, Guidance or Manual etc from enforcing authority)
 - any other relevant matters

The new offence – factors to be taken into account by a jury



- What links are there to HR processes ?
- Driving
- Induction
- Working time
- Pregnancy
- Occupational health

- Who takes the lead in policy development
- Do you talk to the safety dept ?

Driving at Work



- Do you know ?
- Driving licence for individuals (and updating for convictions)
- Insurance covers business use if own car used
- Who checks the condition of pool cars
- What are the responsibilities for company car users
- What rules are in place for use of phones
- What about smoking
- Guidance given on journey planning

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The new offence - summary



Elements of an offence:

- 1 An organisation;
- 2 Who owed the deceased a duty of care;
- 3 Which breached that duty of care by falling so far below what could reasonably be expected so as to be described as a "gross breach";
- 4 A substantial element of the breach was the way the organisation's activities were managed/ organised by its senior managers; and
- 5 The gross breach of duty caused the deceased's death.

Penalties



- **Fines** –
 - Expected to be significantly higher than fines for HSWA offences
 - A starting point of 5% of average annual turnover has been suggested by the English Sentencing Advisory Panel. Up to 10% is proposed in the worst cases.
- **Publicity order** – requires an organisation to publicise the fact of its conviction and certain details of the offence.
- **Remedial order** – requires an organisation to address the cause of the fatal injury.

What should you be doing?



The scope of the investigation:

1. The organisation's strategic approach to health and safety.
2. The "corporate culture".
3. Arrangements for assessing risks and providing safe systems of work and safe working equipment.
4. Training of employees.
5. Supervision and management.
6. Whether procedures are followed in practice/ arrangements for monitoring and reviewing procedures.

What should you be doing?



- Strategic approach/ corporate culture
 - Consider IoD/ HSC Guidance on Directors' Duties
- Review procedures and make improvements
- Incident Response Protocol
- THINK WHAT A CONVICTION WOULD DO TO YOUR RECRUITMENT & RETENTION PLANS

Are YOU smarter than the average bear ?





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