



Corporate Manslaughter and Liability for Health and Safety

Corporate Manslaughter and Corporate Homicide Act 2007

The long awaited Corporate Manslaughter and Corporate Homicide Act (the “Act”) is due to come into force on 6 April 2008. The Act creates a new offence of “corporate manslaughter” (to be known in Scotland as “corporate homicide”) which will replace the common law offence of manslaughter caused by gross negligence as it applies to corporations in the UK. Reform of the law on corporate responsibility for deaths has been under debate for over a decade, prompted by public concern at the seeming inability of the law to bring to justice those perceived to be responsible for a series of major disasters.

Companies and other organisations (including many public authorities) can be prosecuted under the Act where management failures result in a person’s death. The key elements of the offence, which the prosecution must prove to secure a conviction, are:

- (1) that the way in which the organisation’s activities were managed or organised caused a person’s death;
- (2) that there has been a gross breach of a relevant duty of care owed to that individual; and
- (3) that the role of senior management in organising and managing the organisation’s activities was a substantial element in the relevant breach.

Aspects of these key elements are defined in the Act as follows:

- A **gross breach** will be committed if the conduct of an organisation falls far below the standard that can reasonably be expected in the circumstances. In considering this issue, the Act requires the jury to consider whether there have been failures to comply with health and safety legislation and the seriousness of that non-compliance. The jury may also take into account published guidance and whether an organisation’s accepted practices and policies may have encouraged the failure.
- A **relevant duty of care** covers a number of specified duties owed under the law of negligence, including duties owed to employees and other workers, duties owed as an occupier of premises, and duties owed in connection with the supply of goods or services and other commercial activities.



- **Senior management** includes those people who play a substantial role in making decisions about how the whole or a substantial part of an organisation's activities are managed or organised or the actual management or organisation of the whole or a substantial part of those activities. This could therefore include regional and national management as well as senior directors. The aim is that management conduct should be considered collectively as well as individually.

The principal sanction under the Act is an unlimited fine. The Sentencing Advisory Panel has published a consultation paper seeking views on sentencing for the new offence. The Panel has proposed that the starting point for sentencing should be the imposition of a publicity order and a fine of 5% of the offender's average annual turnover. In addition, courts will be able to order the publication of details of the offence and to issue "remedial orders", including to rectify deficiencies in health and safety policies, systems or practices.

The Act imposes liability only on companies and other organisations, and not on individual managers and directors, but both individuals and companies may still incur liability under other provisions of health and safety law.

Some other statutory liabilities for health and safety at work

Health and safety is already regulated by means of a wide range of other statutory provisions. Regulatory bodies (notably the Health and Safety Executive and local authorities) are increasingly active in policing non-compliances, including seeking redress against culpable individuals. The main statutory responsibilities rest upon employers under the provisions of the Health and Safety at Work etc. Act 1974 and regulations made under it. The general duties upon employers include ensuring (so far as reasonably practicable) the health, safety and welfare at work of employees and conducting their undertaking in such a way as to ensure (so far as is reasonably practicable) that other persons (including members of the public) are not exposed to risks to their health or safety.

Currently, breach of health and safety legislation can give rise to criminal prosecution and may result in a fine, depending on the nature of the offence. The law in relation to sanctions for regulatory non-compliance is under review. The Regulatory Enforcement and Sanctions Bill (currently progressing through Parliament) aims to provide regulators with an extended and more flexible array of sanctions. By way of example, this would include the ability to impose fixed monetary penalties or variable monetary penalties (which could be based on a percentage of turnover), to issue compliance notices and to agree enforcement undertakings instead of issuing criminal proceedings.

Where a company commits a health and safety offence and the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the company, then that person can be prosecuted as well as the company. In a similar way, individual directors can be liable for breaches of specific duties imposed via health and safety regulations, for example in relation to the failure to undertake relevant fire safety duties (see Regulatory Reform (Fire Safety) Order 2005) or to ensure appropriate assessment and management of asbestos (see Control of Asbestos Regulations 2006). Sanctions which may be imposed on directors include fines and, in some cases, imprisonment. Courts are also empowered to disqualify individual company directors convicted of certain offences in connection with the management of a company, which could include health and safety offences.



Practical measures to ensure compliance

Companies should ensure that they have in place and have implemented all necessary policies and procedures in respect of health and safety, and that these are kept under review to ensure compliance with current legal requirements. These should include the management and allocation of health, safety responsibilities within the organisation. Designing and implementing appropriate compliance programmes/management systems should assist in managing potential risks and exposure to liability.

The Health and Safety Commission and the Institute of Directors published updated guidance concerning the health and safety responsibilities (including legal liabilities) of directors in October 2007. The updated guidance (INDG417) is available from the IoD website at: http://www.iod.com/intershoproot/eCS/Store/en/pdfs/hse_guide.pdf

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