

THE NEW RULES ON CORPORATE MANSLAUGHTER

A SHORT GUIDE TO THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

After years of contentious parliamentary debate the Corporate Manslaughter and Corporate Homicide Bill finally received Royal Assent on 26 July. However, many of the provisions of the Act will not come into force until early next year.

The Act creates a dedicated offence of corporate manslaughter. The intention behind the legislation is to set out more clearly the extent of the duty of care owed by companies and other organisations and to overcome some of the legal technicalities which, in the past, have made it difficult to secure successful convictions of company defendants.

The key elements of the Act are as follows:

The offence

A company or organisation can be charged with the offence of corporate manslaughter if its activities lead to someone's death in circumstances where there was a gross breach of the duty owed to that person. A breach of duty will be gross if the conduct of the organisation falls far below what can reasonably be expected of the organisation in the circumstances. Ultimately that will be a matter of fact for a jury to decide. The duty of care can arise in a number of circumstances including:

- Employment
- The occupation of premises
- The supply of goods or services
- The carrying out of construction or maintenance
- The use of any plant or vehicle

Which organisations are affected?

The Act applies to corporations, police forces and partnerships. It also applies to organisations listed in the schedule to the Act which includes all the major Government departments such as the Department of Health and the Department of Transport; the Crown Prosecution Service; and Revenue and Customs. Crown Immunity is abolished under the Act.

Extending the duty of care

The Act specifically extends the duty of care to persons whose safety is the responsibility of the company or organisation. This provision was introduced to allow deaths in custody to be investigated under the Act. Persons affected include:

- A person detained in a custodial institution or in a custody area at a Court or police station
- A person detained at a removal centre or a short term holding facility
- A person being transported in a vehicle, or being held in the course of a prison escort or immigration escort
- A person living in secure accommodation
- A person who is a detained patient

The duty of care and public policy decisions

An organisation which has the responsibility for deciding matters of public policy will not owe a duty of care arising out of the policy decision. This would exclude, for example, a decision by a public body not to licence a new medicine or to allocate health care resources.

The duty of care and emergencies

Any duty of care owed by an organisation in respect of an emergency situation will not be a relevant duty of care for the purposes of the Act. Organisations with emergency responsibilities are listed in the Act and include the fire service, providers of organ transport and ambulance services, the armed forces and rescue services.

The emphasis on senior management responsibility

In order to convict a company or organisation for corporate manslaughter it will no longer be necessary for an offence to be proved against an individual within that organisation (the so-called 'controlling mind'). However, the way in which an organisation's activities are handled by senior managers will be a substantial element in proving that there has been a breach of the duty of care. Senior management means persons who play a significant role in:

- The making of decisions about how the whole or a substantial part of its activities are to be managed
- The actual managing of the whole or a substantial part of those activities

The importance of a health and safety culture

A trial jury considering an offence of corporate manslaughter may also be invited by the Judge to consider the extent to which evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged a failure of the health and safety system or to have produced a tolerance of it.

Penalties

An organisation convicted of corporate manslaughter will face an unlimited fine. No individual can be prosecuted under the Act and, hence, the Court cannot impose a custodial sentence. However individuals who commit a serious breach may still face prosecution and possible imprisonment for the common law offence of gross negligence manslaughter. The common law offence has been abolished in relation to companies.

A Court also has the power to make a Remedial Order against a convicted organisation setting out the steps to be taken within a specified period to remedy health and safety breaches. Failure to comply with such an Order will in itself be an offence.

In addition the Court may also make a Publicity Order requiring the organisation to publicise in a specified manner the particulars of the offence and the fine imposed.

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