

# The Corporate Manslaughter and Corporate Homicide Act 2007

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The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6<sup>th</sup> April 2008. For the first time companies and organisations can be found guilty of corporate manslaughter or homicide as a result of serious management failures, resulting in a gross breach of a duty of care. In England, Wales and Northern Ireland the new offence will be "corporate manslaughter" and in Scotland, "corporate homicide".

The Act came about because of the considerable public concern surrounding cases of corporate manslaughter, which were not being punished for thousands of deaths by being reckless or cost cutting. The sloppier and more badly managed a company was, the more protection it had from being prosecuted for manslaughter. This was because of the need to find a directing mind that was solely responsible for the unsafe or dangerous act which caused the death. In badly managed companies the directing mind was never clearly defined.

The Act will abolish the unhappy bedfellows of applying common law principles of manslaughter (which had been developed to deal with people) to the legal fiction of companies (which are just pieces of paper pretending to be people). Because of this, it has proved very difficult to prosecute large organisations and companies. The only successful prosecutions have been against small companies where the director and company are one and the same.

The new Corporate Manslaughter and Corporate Homicide Act, which needs the consent of the Director of Public Prosecutions before any prosecution may be initiated, seeks to address this difficulty by focusing on the way in which a company's activities are managed or organised. The Act says the jury may consider whether the evidence shows that there were "attitudes, policies, systems or accepted practices within the company that were likely to lead to the death". So, the assessment of a defendant's corporate culture; risk assessments; safe systems of work etc can be legally relevant. The courts will now be able to consider the wider corporate picture, looking collectively at the actions, or more appropriately the failings, of the company's senior management. In essence, the crime is committed where a company owes a duty to take reasonable care for a person's safety, but the way in which its activities have been managed or organised amounts to a gross breach of that duty and causes death. To convict a company, the prosecution must prove that the failure came substantially from "senior management". As to who will be the senior manager will be different in each case. Senior management is defined in the Act as those persons who play a significant role in the decision-making process about how the company's activities are managed and organised. So the senior management test will be different for a small 5 employee company as opposed to a larger 200 employee company.

There has been much discussion of whether safety responsibilities could be delegated down the management hierarchy, in order to avoid the clutches of the new Act. For example, giving a non-director or foreman total control over safety responsibility. However, it is thought this delegation of such important responsibilities would fall foul of the new law by being itself a

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grossly negligent act by a senior manager. The new Act will not affect individuals - only companies. Therefore the Safety Officer, Managing Director or whoever, will not face personal sanctions e.g. prison or a fine. These sanctions were removed after vociferous opposition from industry. The current sanctions are only targeted at the company or organisation.

The sanctions in the new Act are:

- **A fine.** There is no upper limit to what this can be.
- **A Publicity Order.** This requires an organisation to publicise the fact of its conviction and certain details of the offence, in a way specified by the court.

In addition, the court can set a Remedial Order, requiring the organisation to address the cause of the fatal injury – similar to an Improvement Order imposed by a HSE Inspector or EHO.

If a company has a good, effective health and safety system in place, which identifies hazards, acts on them and puts safety systems in place; then no liability will attach to the company even if there is an unforeseen death.

The Act makes clear that liability will only attach for corporate manslaughter or corporate homicide if:

- a) The company or organisation causes a person's death; and
- b) The way in which its activities are managed or organised amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased by its senior management; and
- c) They were a substantial element in the breach.

For further details or advice about this new Act of Parliament, always consult with specialist advisors.