

Corporate Manslaughter and Corporate Homicide Act 2007



HEWITSONS

The Corporate Manslaughter and Corporate Homicide Act 2007 received Royal Assent on 26th July 2007, and is expected to come into force on 6th April, 2008 (apart from the provisions relating to deaths in custody and publicity orders).

A. The background

Under the old law, a company could only be convicted of manslaughter if a "directing mind" of the organisation (a senior individual whose actions embodied the company) was also guilty of the offence. In the past, prosecutions for corporate manslaughter failed because of the difficulties of finding individual managers legally responsible.

Also, Crown bodies such as government departments did not have a separate legal identity for the purposes of prosecution, and therefore had an effective immunity.

The new offence changes the basis on which companies are liable for prosecution for manslaughter, and will make it easier to prosecute the organisation when serious 'health and safety' failures lead to death. Immunity for government departments is also lifted.

B. To whom does the Act apply?

The legislation applies to corporations, defined as any body corporate, whether incorporated in the UK or elsewhere. This includes companies incorporated under companies legislation, and bodies incorporated under statute (governmental bodies) or by Royal Charter. It does not apply to a "corporation sole" (for the most part individuals holding certain ecclesiastical offices, but also certain Ministers of State and the Sovereign herself).

The Act applies to partnerships (whether covered under the Partnership Act 1980 or Limited Partnerships Act 1907) and Limited Liability Partnerships are corporations and are subject to the legislation by virtue of that status. It also applies to police forces, trade unions and employers' associations if the organisation concerned is an employer.

In so far as it applies to corporate bodies, the common law offence of gross negligence manslaughter has been abolished, and all prosecutions for manslaughter against such bodies will be brought under this new Act.

C. The elements of the offence of Corporate Manslaughter (Corporate Homicide in Scotland)

The four elements of the offence are:

1. The organisation must owe a "relevant duty of care" to the victim. The offence will only apply where an organisation owes a duty of care:
 - 1.1 to its employees or to others working for the organisation (contractors, volunteers) or performing services for it e.g. to provide a safe system of work;
 - 1.2 as occupier of premises e.g. the responsibility to ensure buildings are in a safe condition;
 - 1.3 in connection with:
 - 1.3.1 its supply of goods and services,
 - 1.3.2 its carrying on of construction or maintenance operations,
 - 1.3.3 its carrying on of any other activity on a commercial basis e.g. farming and mining,
 - 1.3.4 its use or keeping of any plant, vehicle or other thing,
 - 1.3.5 a person being held in detention or custody for whose safety the organisation is responsible.

This includes the sort of activities typically carried on by companies. The offence does not apply to aspects of the performance of certain public functions (e.g. decisions of public policy, exclusively public functions, military activities, law enforcement and the emergency services when responding to emergencies, and child protection functions). A partnership will be treated as though it owed the same duties of care as a corporate body.

2. The organisation must be in breach of the duty of care as a result of the way in which the activities of the organisation were managed or organised. An organisation can only be guilty of an offence if the way in which its activities were managed or organised by its senior management is a substantial element of the breach.
3. The way in which the organisation's activities were managed or organised (the "management failure") must have caused the victim's death. It need not be the sole cause of death.

4. The management failure must amount to a “gross” breach of the duty of care. It will be a gross breach if the conduct falls far below what could reasonably have been expected of the organisation in the circumstances. The Act sets out a non exhaustive list of factors to be considered by a jury:

- 4.1 whether the evidence shows that the organisation failed to comply with any health and safety legislation, how serious that failure was, and how much of a risk to death was posed;
- 4.2 the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices that were likely to have encouraged any failure, or to have produced tolerance of it; and
- 4.3 any health and safety guidance relating to the alleged breach.

D. The penalties on conviction

The offence is indictable. The precise detail of the penalties available is still under consideration by the Sentencing Advisory Panel but three sanctions have been proposed:

- 1. An unlimited fine.** The view of the Advisory Panel is that annual turnover should be the appropriate indicator of an organisation’s ability to pay a fine. The fines should be significantly higher than at present for Health and Safety at Work Act offence resulting in death.
- 2. Remedial Order.** This Order would require the organisation to correct specified failings within a given timescale and the steps to take to be compliant. Failure to comply will result in a separate offence punishable by an unlimited fine.
- 3. Publicity Order.** This new sanction will be available to courts together with a fine. The Advisory Panel’s view is that this Order will be used in every case of Corporate Manslaughter. The Order will require the organisation to publicise details of the conviction including steps taken under any Remedial Order imposed.

The issue of costs should also be considered. Prosecution costs are payable by the defendant as well as the fine and often reach £100k where a fatality is involved. The costs of defending the action are sometimes covered by insurance but not always depending upon the insurance policy.

The financial penalty and adverse publicity provided by these sanctions is likely to be a very heavy burden to any organisation which may never recover or take years to do so.

Note: This guidance note is only a summary of the Act’s main provisions.

If further information or advice is required on a specific situation please contact one of our offices:

Hewitsons, Shakespeare House, 42 Newmarket Road,
Cambridge CB5 8EP Tel 01223 461155

Hewitsons, Exchange House, 482 Midsummer Boulevard,
Central Milton Keynes MK9 2EA
Tel 01908 247010

Hewitsons, 7 Spencer Parade, Northampton,
NN1 5AB Tel 01604 233233

Hewitsons, 53 High Street, Saffron Walden,
Essex CB10 1AR Tel 01799 522471

www.hewitsons.com

email: enquiries@hewitsons.com

Hewitsons is regulated by the Solicitors Regulation Authority.



Cambridge | Milton Keynes | Northampton | Saffron Walden