



Corporate Alert

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Corporate Manslaughter: a New Offence for Companies

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008 reflecting a shift in public opinion towards making companies take their safety obligations seriously.

What's the New Offence?

The new Act introduces a single new offence (known as "corporate manslaughter" in England, Wales and Northern Ireland but "corporate homicide" in Scotland) of which an organisation will be guilty if the way in which its activities are managed or organised:

- causes a person's death; and
- amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

The role of the organisation's senior managers in managing or organising its activities must amount to a substantial element in the breach of duty.

What is a "Gross Breach of a Relevant Duty of Care"?

Whether or not an organisation owes a duty of care to an individual is determined under the common law of negligence: this includes duties owed to employees, occupiers of properties and persons involved in supplying goods and services or carrying on construction and maintenance operations. To be guilty of the new offence, there must have been a gross breach of such a duty, that is conduct which falls "far below" what can reasonably be expected of the organisation in the circumstances. The Government's aim is clearly to target only the most serious management failings.

Who is Liable?

It is important to remember that it is only the organisation itself (that is, a company and not its individual directors or managers) that can be convicted of the new offence.

Clearly, however, as the directors are the "mind" of the company, it will be their failings that could lead to the company being prosecuted and therefore all directors need to be aware of the new Act. Directors and managers could also still be prosecuted themselves for the common law offence of gross negligence manslaughter or under health and safety legislation.

What's the Penalty?

If convicted, an organisation faces an unlimited fine. A consultation document issued by the Sentencing Advisory Panel indicates that fines should be in the range of 2.5% to 10% of average annual turnover, or more in the event of significant aggravating factors. The court may also make a remedial order, requiring the organisation to remedy the working practices or defects which lead to the death in the first place, or a publicity order, requiring the organisation to publish details of its conviction.

What Should You Do Now?

In the light of the new Act directors should take the opportunity to review their existing health and safety policies and procedures. Additional training could be provided for senior managers and an incident response plan could be developed. The directors should also review their existing insurance policies to ensure that recoverable legal costs incurred under the new Act are covered.

For assistance on this, or any other matter, please speak to your usual Halliwells' contact or **Sophie Brookes** at sophie.brookes@halliwells.com or Tel: 0161 618 4776.

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