

**GUIDANCE FROM THE HEALTH & SAFETY COMMITTEE****Corporate Manslaughter Act 2007**

The long awaited Corporate Manslaughter and Corporate Homicide Act 2007 finally came into force on 6 April 2008 after a decade of debate from the government. This created a specific corporate offence to prosecute in situations where a fatality has resulted due to the organisation being at fault. Companies and partnerships can be prosecuted and, although the offence does not apply to directors or individuals, they may still be liable to prosecution under existing legislation.

Under the Act it is now possible for employers to be prosecuted for Corporate Manslaughter (known as Corporate Homicide in Scotland) if the way in which the senior management have organised the activities of its employees leads to a fatality due to a “gross breach” of a “relevant duty of care”. This removes the need to prove that an individual “as a controlling mind” is guilty – it’s the management / organisation of activities by senior management as a whole that is relevant.

Senior managers are those that either make decisions on how the whole or a large part of an organisation is managed, or those that actually manage the whole / a large part of the organisation.

To be classed as a gross breach, the conduct of the organisation must fall far below the standards that can reasonably be expected of the organisation in the circumstances. Issues that will be taken into account include:

- The seriousness of the failure
- How much of a risk of death did it pose?
- Industry / HSE guidance related to the activity.

These circumstances are wide ranging and the government defines “relevant duty of care” as duties owed under the law of negligence and includes employees, customers and members of the public (where relevant). Using the example of a train company the customers would be passengers and the public would be those who live within the vicinity.

The penalty, if convicted, is a potentially unlimited fine and may include remedial/publicity orders. A remedial order is when the court asks the company to remedy the failure while a publicity order requires the employer to publicise the conviction with the particulars of the activities that led to the fatality as well as the fine levied.

### *The voice of steel distribution*

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On the 15 November 2007 the Sentencing Advisory Panel recommended that if a company pleads “not guilty” at trial a publicity order is given along with:

- A fine of 5% of the average annual turnover for the three years prior to sentencing.
- The court should then take into account all other circumstances of the accident and the employer to arrive at a fine of 2.5 – 10% of the average turnover.
- If the aggravating circumstances are particularly significant the court may decide on a fine of above 10% of the average turnover. This could cause a financially devastating fine to be given in extreme circumstances. This does however equalise the punishments for large and small companies.

The publicity order could also have an effect on the reputations of companies, leading to damaged share price, increases in insurance premiums and companies may experience difficulties in finding new work, particularly when tenders are involved.

The implications are that it will level the playing field between small and large employers, as previously it was mainly small companies who were successfully prosecuted. However it is perceived that if a director of a small company could be identified as the one making a direct decision that resulted in a fatality occurring they could be prosecuted as an individual for gross negligence manslaughter. Directors of larger companies would be less at risk of this occurring.

The new legislation should encourage all employers to take a fresh look at their Health and Safety compliance and ensure that all their activities have been designed to be compliant with up to date legislation and, most importantly, that they enforce the safe activities! It is suggested that employers should look at the following aspects:

- Assess the organisation structure of the company to identify all staff in senior management role. Ensure that all are trained and competent in their roles and in the Health and Safety aspects of their roles.
- Review the job titles and job descriptions of each of the senior management positions to ensure that job descriptions match the level of responsibility held by the position.
- Provide training for all those in need.
- Check that the insurance policies cover legal protection in the event of a criminal charge and consider extending the insurance policy to include legal protection for staff during an investigation.
- Review the culture within the organisation with regard to attitudes towards Health and Safety. Use this information to help promote good working practices and a safe environment for employees and the public.
- Look at the disaster management plan of your company and ensure there are steps for liaising with Local Authorities/investigators/advisors in the event of a fatal accident occurring.
- Ensure that the Board of Directors have read the HSE guidance and are in compliance with it. The guidance from the HSE is “Director’s Responsibilities for Health & Safety” and “Leading Health & Safety at Work”. (<http://www.hse.gov.uk/pubns/indg417.pdf>)