

Corporate Manslaughter and Corporate Homicide Act



Introduction

This legislation, which comes into force on 8 April 2008, will make it easier to prosecute large and medium sized organisations for activities that result in an individual death. Prosecutors will no longer have to identify a single individual, director before it can bring criminal proceedings. The new legal test simply requires that a significant element of the serious management failure (that caused the deaths) must be at a senior manager level. An unlimited fine will be issued on a company found to be guilty.

Key Features of the Act

- An organisation will be guilty of an offence if the way its activities are managed or organised by its senior managers causes a persons death and is a gross breach of the duty of care owed by the organisation to the deceased.
- The Act is centred on the corporate activity. This will mean that individuals will not be prosecuted. However individuals will continue to be vulnerable under the existing law relating to manslaughter by gross negligence.
- The Act introduces a new definition of senior management. **Senior management** is defined as the persons who play significant roles in:
 - i. the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
 - ii. the actual managing or organising of the whole or a substantial part of those activities.

Who is the Duty of Care Owed to?

The Act defines the following duties:

- a) a duty owed to its employees or to other persons working for the organisation or performing services for it;
- b) a duty owed as occupier of premises;
- c) a duty owed in connection with—
 - i. the supply by the organisation of goods or services,
 - ii. the carrying on by the organisation of any construction or maintenance operations,
 - iii. the carrying on by the organisation of any other activity on a commercial basis, or
 - iv. the use or keeping by the organisation of any plant, vehicle or other thing;
- d) a duty owed to a person who, by reason of being a person is someone for whose safety the organisation is responsible.

- The new offence will be clearly linked to the standards required under existing health and safety laws.
- Crown bodies will be liable to prosecution for the first time.
- Certain unincorporated bodies such as partnerships are also now liable.
- The offence will be triable only in the Crown court in England, Wales and Northern Ireland and the High court in Scotland
- The punishment, if found guilty, will result in an unlimited fine. However,

Business Impact:

➤ **New legislation will bring prosecution for manslaughter against companies whose gross negligence leads to the death of individuals**

For further information please contact Legal Services: 01494 434747



"Your customers, especially those in the public sector are now subject to prosecution for the first time."

companies will need to consider the wider implications of a conviction under this new legislation including the brand damage which would take place following a conviction. A successful prosecution of corporate manslaughter will carry a great deal more stigma and no doubt adverse press and public relations.

- The Act also gives the courts power to impose a remedial order which can already be imposed for health and safety offences and require the company to address the cause of the fatality.

Procedure for Prosecution

In the first instance it is likely that the Health and Safety Commission will investigate as is the case today. If they are of the view that there is a breach of health and safety legislation by senior management then the case will be handed to the Police for criminal investigation.

A jury will be asked to consider if the conduct of the company fell far below what could reasonably have been expected of the organisation in the particular circumstances. They will be permitted to take into account "the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation" – more generally known as, the corporate culture.

Key Consideration for Members

Members will need to ensure they have robust health and safety policies in place for all aspects of their business. This would include all aspects of the service Members offer their customers, which can range from vehicle safety to fleet management services.

Such policies should be comprehensive and in line with all existing health and safety legislation which is in place today.

Your customers, especially those in the public sector are now subject to prosecution for the first time and may require assistance from you in relation

to their vehicles used for business purposes.

Key action points could be:

- follow the guidelines of the Health and Safety Executive in assessing the risk, carry out a formal risk assessment, which must be recorded in writing.
- Implement measures to manage and minimise the risk.
- Ensure responsibility for health and safety is demonstrated from the managing director down.
- Make sure you are able to demonstrate, via an audit trail that you have implemented a health and safety strategy

The above will not guarantee protection but, taking such steps should assist towards compliance, and ultimately a defence.

Next Steps

The Act comes into force on 6 April 2008 and the Ministry of Justice will be issuing guidance in the Autumn.

In addition, a new Code of Practice for Directors and other Senior Management is to be issued by the Health and Safety Executive later this year in conjunction with the Institute of Directors

Further Information

The BVRLA's Driving at Work Guide is available free of charge to assist with compliance. E-mail:

reception@bvrla.co.uk for copies

Health and Safety Executive –
www.hse.gov.uk

ROSPA -
<http://www.rospa.com/roadsafety/resources/employers.htm>

For your customers a customer sheet is available via the BVRLA's customer information portal. For more information on the portal please click on the link below:

http://www.bvrla.co.uk/public/Services/Customer_Information_Portal.cfm