



Corporate Manslaughter - Guide

Corporate Manslaughter and Corporate Homicide Act 2007

From 6 th April 2008, the new Corporate Manslaughter and Corporate Homicide Act 2007 will come into force. The Act reflects what appears to be the public's view, that companies and managers should be held more directly responsible for their employees' negligent actions.

Traditionally, employers have only really had to ensure that health and safety requirements are adequately adhered to 'in the workplace', but this new Act takes their obligation much further.

With reports that up to 33% of all road fatalities may be work-related, employers should take note that they will be directly responsible for their employees' actions while they are on company business off the premises.

Why a new act?

Until now, corporate manslaughter ('corporate homicide' in Scotland) was an aspect of the common law offence of Gross Negligence Manslaughter. Legal tests associated with that offence mean that, before an organisation could be charged with corporate manslaughter, it was necessary to prove that "a directing mind" of the organisation (that is, a senior individual who can be said to embody the company in his actions and decisions)"is also guilty of the offence. This is known as the identification principle.

Modern corporate structures tend to be complex, particularly in large organisations, often with many subsidiaries. It is often not possible to identify any one individual who could be considered the embodiment of the organisation, indeed corporate structures are often designed to avoid such a situation to ensure continuity regardless of senior management turnover. In the case of multinational organisations, such decision-making ability might lie outside UK jurisdiction.

Consequently, there have been few successful prosecutions for corporate manslaughter under the existing legal provisions. These have all related to very small organisations, where it has been possible to identify a single individual who was in ultimate control of the company's activities, and to prove that this individual was personally guilty of the offence of Gross Negligence Manslaughter.

Government intention

The Government clearly intends the offence of corporate manslaughter to apply to strategic failings, where senior managers have knowingly allowed the organisation to fail in its duties under health and safety legislation, and have done so deliberately, or by ignoring evidence there was a problem.

This targets the offence to fundamental failure of the management system at a high level within the organisation, leading to a wilful or negligent disregard for the health and safety of individuals.



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It is entirely appropriate that the new offence should be directly related to health and safety legislation. However, concern has been expressed about the inclusion of guidance in the list of items to be considered by the jury.

The offence

The offence is defined in section 1 of the new legislation as follows:

“An organisation” ... “is guilty of an offence [of corporate manslaughter] if the way in which its activities are managed or organised:

- a) Causes a person's death, and;
- b) Amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased”.

The term ‘organisation’ includes bodies incorporated by law or charter, partnerships, trades unions and employers’ associations, as well as police forces and crown bodies listed in a schedule to the Act. This opens the vast majority of organisations to liability.

The new offence takes context from the common law duty of care to persons. This is a well understood and well-trying legal concept, and addresses the key interactions between organisations and individuals.

The Act further declares that:

“An organisation is guilty of an offence... only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to”

This clause is designed to ensure that only truly corporate failings are caught by the legislation. Individuals’ liability to the offence of Gross Negligence Manslaughter will remain where fatalities result from the acts or omissions of natural persons, rather than from corporate failings. The identification principle is not relevant in such cases and consequently current law is considered adequate for these offences. Section 1 also establishes that on conviction, the offence of corporate manslaughter may be punishable by a fine – the Act does not set a limit on the penalty.

Sections 2 – 7 define ‘duty of care’ in the context of corporate manslaughter. Section 8 sets out factors to be considered by the jury in deciding on the offence, and aims to guide them in interpreting the terms used. It suggests the jury: • must consider whether the organisation failed to comply with health and safety legislation relating to the breach, and if so, how serious that failure was and whether it contributed to the risk of a fatality;

- may consider whether evidence suggests that attitudes, policies, systems or practices within the organisation encouraged or tolerated compliance failure, and;
- may have regard to health and safety guidance, including codes, guidance or manuals, issued by an enforcing authority which relate to the breach. These three factors are key in setting the context for the offence.



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If employees do not have company cars, should we still be concerned?

Company vehicles do not just include those provided by their employer, but also cover the employee's own vehicle when used for work purposes. Therefore, if an employee is using their own car to undertake company business - such as driving to meetings or going out for supplies - and is convicted of a motoring offence, then the company may be held responsible.

Employers must take responsibility to ensure privately owned vehicles used for company business are adequately insured for business use, are roadworthy, and that the employee has a valid driving licence. There must be an administrative paper trail to demonstrate that these checks have been carried out and backed up with the necessary policies and training.

Three Examples

What are the implications if an employee is charged for driving while using a mobile phone when driving to a business meeting?

Under new initiatives, police can request a meeting with a director of the employee's company and ask to see relevant policies, risk assessments and documentary evidence of training and effective management. The employer's compliance with health and safety legislation would come under direct scrutiny.

If an employer refuses or fails to co-operate, the sanctions include improvement notices and fines (up to £20,000 in the Magistrates Court and unlimited in the Crown Court), which can be imposed on both companies and managers, personally.

The employer should ensure that their policies on driving at work are prominent, making it clear that any breach is a disciplinary offence, and support this with relevant training records.

What could be the implications if an employee fatally hits a pedestrian while driving back from a client meeting?

The employer will be found guilty if, because of the grossly inadequate way the company's activities are managed, it has caused a person's death - for example, if the employee was driving for long hours either at the employer's request, or where the employer has simply failed to monitor their driving hours. Sanctions can include unlimited fines and/or a Court Order to remedy the failings. Perhaps the most damaging implication is the risk to company image, as employers can be required to publicise the offence in a manner specified by the Court. An employer that operates comprehensive driving-at-work policies, ensuring all staff are aware and trained, is more likely to successfully defend such action.



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If an employee has an accident in a company car, but fails to tell the employer, what action can we take?

Provided the employer has a clear accident-reporting policy, then disciplinary action can be taken under its normal disciplinary procedures. Depending on the seriousness of the situation, this could ultimately result in the employee's dismissal. Where there is no policy in place, then disciplinary action could still be taken, but will be more difficult.

From April 2008, employers should not allow themselves to be in a situation where they do not have an appropriate policy under which to take such disciplinary action. The accident reporting policy must require the employee to provide details of the accident and co-operate with any resulting investigation. Administration can be undertaken through such methods as keeping an accident report card in the vehicle, although some large organisations operate call centres for drivers to report accidents immediately.

What measures should we take? In general

- Assess your organisational structure to determine who could be considered a 'senior manager' - these individuals should be appropriately trained and competent for their role.
- Review job titles and job descriptions to ensure they represent the seniority of the post-holders' position. • Provide update training for senior managers on their health and safety responsibilities.
- Review all health and safety policies to ensure that statements made and standards set are achievable and do not exceed legal obligations, unless there are good reasons.
- Check that your insurance cover includes legal protection in the event of criminal charges for corporate manslaughter. • Review your health and safety culture to promote a safer environment for your employees and, where relevant, the public.
- Revisit your disaster management plan and ensure there is a protocol for dealing with the authorities and working with legal advisers when a fatality occurs.
- Consider insurance and indemnity policies for staff members who may need legal support during the period of any investigation. This will need to cover expenses where they are not personally found guilty of such offences.

Concerning drivers and company cars

- Assess the driving capabilities of all new drivers. • Routinely screen driving licences of all drivers - not just company car drivers.
- Implement vehicle spot checks - analysing general condition, roadworthiness and service history.



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- Monitor all drivers' working hours including travelling time.
- Record, classify, group and statistically analyse all accidents.
- Undertake a full risk assessment to identify problems.
- Act on the information gleaned and prioritise solutions.
- Design a management plan to implement the solutions and communicate it to all staff.
- Introduce a driving safety culture that does not lightly accept accidents.

We now refer you to our Health and Safety Section where you can download documents which will help you build up a paper trail to prove you are undertaking the necessary actions to ensure compliance with this Act.