



Corporate Manslaughter and Corporate Homicide Act 2007

- The Act applies to work related deaths that occurred on or after 6 April 2008. The Act is not confined to a duty of care by employers, extending to third parties including occupiers of premises, construction works, suppliers of goods and services, use of vehicles etc and all commercial activities, thus requiring demonstration of safety and quality checks .
- Prosecution difficulties previously arose from the requirement for the identification of an individual 'controlling mind' to be found personally guilty, before a corporate manslaughter charge could be brought. The new Act abolishes this requirement. The Act provides no new legal obligations, but provides a platform for a single or series of collective errors resulting in death to be considered as a criminal charge and brought before the courts.
- The term "senior management" is defined under the Act to mean those persons who play a significant role in the management of the whole, or a substantial part of the organisation's activities. This covers both those in the direct chain of management as well as those in, for example, strategic or regulatory compliance roles.
- A successful prosecution under the Act requires the establishment of a 'gross' breach relevant to an established duty of care, and that a substantial element of that breach was because of the way those activities were managed or organised by senior management. Consideration of what amounts to a gross breach, relevant to an established duty of care includes; consideration of how serious the breach was, how much of a risk of death it posed, extent of compliance with health and safety legislation and efficacy of the organisation's health and safety management system.
- Organisations should be mindful of hiding behind a veil of compliance or third party certification to management systems as being sufficient. The Act enables the investigation and interrogation of organisations that pay lip service to such matters, demanding evidence of a pro-active and holistic interdepartmental management (i.e. non silo) approach to health and safety that is embedded in the wider culture of the organisation and led from the most senior management positions.
- Successful prosecutions are likely to result in significant fines related to turnover. Additional financial impacts will result through loss of faith and goodwill from customers following the issue of a publicity order, requiring an organisation to publicise the death and conviction of a criminal manslaughter charge within the media. A rectification order is also available to the courts.
- Individual directors and managers can still face personal prosecution under the Health & Safety at Work Act (HSWA). Observers expect that prosecutions under the Act will correlate with an increase in individual prosecutions under the HSWA and/or fines for failures of the HSWA through the new Health & Safety Offences Act 2008 which has introduced higher fines up to £20K and periods of imprisonment from the lower courts.

BEST PRACTICE

- Directors and senior management review of the organisation and responsibilities for health and safety i.e. 'Managing the activities' and 'engagement of safety culture'.
- Visible input from a proactive and systematic H & S management system inclusive of monitoring, auditing and review e.g. HSG65 or BS OHSAS 18001.
- Knowledge, awareness and implementation of HSE/IOD Guidance INDG417
- Senior management involved to lead change management issues through the business
- Effective process for risk assessment and review of adequacy of controls
- Monitor and benchmark against appropriate performance metrics
- Integration of all management systems into one e.g. quality, environment and H & S.

GUIDANCE AND USEFUL INFORMATION

Corporate Manslaughter and Corporate Homicide Act 2007 <http://www.opsi.gov.uk/acts>

HSE: INDG417 Leading health and safety at work <http://www.hse.gov.uk/pubns/indg417.pdf>

QBE: <http://www.qbeurope.com/documents/casualty/risk/issues/Manslaughter.pdf>

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