

## **Corporate Manslaughter and Corporate Homicide Act 2007**

On the 6<sup>th</sup> April 2008 the law on Corporate Manslaughter will change, when the Corporate Manslaughter and Corporate Homicide Act 2007 comes into force. The Act creates a new offence which an organisation will be guilty of if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

The Act is intended to remedy a defect in the existing law which means that organisations can only be convicted of manslaughter if a “directing mind” of the Company (e.g. a director) is also personally liable. In practice, this has been hard to prove in large organisations. However, from April, it is believed that the new law will make it easier to convict organisations, large or small.

The new offence is intended to sit alongside existing duties owed by organisations under the law of negligence, such as duties owed to employees, duties owed as the occupier of premises, and duties owed as a result of carrying out construction operations – for example, under the CDM Regulations. An offence will only be committed if there is a “gross” breach of such a duty, that is a serious breach falling far below the standard expected.

The prosecution will also need to show that a substantial element in the breach is the way in which the organisation’s activities are managed or organised by its senior management. This is new. The prosecution will not be concerned with failures on the part of individuals, but instead with how an activity was being organised and managed. Consideration will be given to the systems of work in use, the training given to employees, the adequacy of their equipment, the quality of supervision and management, as well as more general issues such as the organisation’s strategic approach to Health & Safety, risk assessment and auditing.

Senior management are those whose jobs include making significant decisions about the organisation, whether it is at head office, regional, divisional, or operational level.

On conviction an organisation can expect to be fined, heavily. Also, the Court can make a Publicity Order requiring the convicted organisation to publicise the conviction and details of the offence.

So, what should you do to ensure that you do not fall foul of the Act? All employers must already comply with health & safety legislation, and the Act does not affect this. However, what it does do is provide an opportunity for organisations to satisfy themselves that their systems for managing health & safety are adequate at all levels of the organisation, because if they are not and a fatality occurs you are facing the possibility of a substantial fine which could jeopardise the viability of your business.

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