

## The Corporate Manslaughter and Corporate Homicide Act 2007

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**CATEGORY:**  
ARTICLE

### Corporate Manslaughter and Corporate Homicide Act 2007 (the 'Act')

The Act, which came into force on 6 April 2008, clarified the criminal liabilities of companies or organisations where serious failures in the management of health and safety result in fatality. The Act created a new criminal offence of corporate manslaughter that replaced the common law offence of manslaughter by gross negligence for companies.

The Act was adopted to address a long-standing concern that the common law principles of manslaughter were ill suited to the prosecution of companies. Under the previous law, for a company to be found guilty of manslaughter two conditions had to be met:

- An individual working for the organisation must be found guilty of gross negligence manslaughter; and
- That person must be identified as being the 'controlling mind' of the company.

By having diffused management systems or by delegating operational responsibility down the management chain, a company, especially a large company with a complex management structure, was able to escape responsibility for deaths it had caused. The Act closed what was previously regarded as a legal loophole which allowed larger organisations to escape liability for manslaughter. With the introduction of the Act, companies can be held accountable as evidenced by the first case brought under the Act in 2009. Cotswold Geotechnical Holdings has been charged with the criminal offence of corporate manslaughter following the death of an employee, a junior geologist, who was killed while taking soil samples from a building site. The trial concluded in February 2011 and the company was found guilty of the offence and fined £385,000.

In the second case of its kind, Lion Steel Ltd. has been charged with corporate manslaughter following the death of an employee who fell through a roof. In addition, three of the company's directors have been charged with gross negligence and manslaughter under health and safety laws for failing to ensure safety at work of their employees. The first hearing took place in August 2011.

In the light of application of the Act, companies should review their liability insurance to check that recoverable legal costs under the Act would be covered.

### Who does the offence apply to?

The offence created by the Act only applies to "organisations", which are defined in section 1(1) as:

- Corporations
- Partnerships covered by the Partnership Act 1890 and limited partnerships under the Limited Partnerships Act 1907, provided that they are employers
- Government departments and other public bodies listed in Schedule 1 to the Act
- Police forces
- Trade unions or employers' associations that are employers

This is the first time in law that companies can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of duty of care.

While the Act does not apply to individuals, such as directors or managers, individuals will still be able to be prosecuted at common law for manslaughter by gross negligence or under existing health and safety regulations, and an individual director of a company can be charged with the criminal offence of manslaughter when he causes a death through gross negligence. The court must be satisfied that:

- The defendant owed a duty of care to the deceased;
- There had been a breach of this duty of care; and
- The breach was so grossly negligent that the defendant can be deemed to have had such disregard for the life of the deceased that the defendant's conduct should be seen as criminal and deserving punishment.

A person need not be aware of the risks created by their conduct for that person to be convicted of manslaughter. For example, two directors of a haulage company were convicted of manslaughter after one of their drivers fell asleep at the wheel and caused the deaths of two other motorists in a seven-vehicle motorway accident. The directors were convicted on the basis that they had failed to regulate the driver's hours.

What constitutes an offence?

An organisation will be guilty of the statutory offence if the way in which its activities are managed or organised:

- Causes a person's death; and
- Amounts to a gross breach of a relevant duty of care owed to that person.

Who are senior management?

An organisation cannot be convicted of the new offence unless the prosecution can prove that a substantial element of the breach lies in the way the organisation's senior management managed or organised its activities. It is therefore important to clarify who is considered to be "senior management". Under the Act, "senior management" is defined as those persons who play significant roles in:

- The making of decisions about how the whole or a substantial part of an organisation's activities are to be managed or organised; or
- Actually managing or organising those activities.

Whether the role of senior managers is significant is a question of fact but the intention is to capture those whose role is decisive or influential. As the Act is concerned with the way an activity is managed or organised, the offence cannot be avoided by senior management delegating responsibility for health and safety.

What constitutes gross breach?

Gross breach means conduct that falls far below what can reasonably be expected of the organisation in the circumstances. The Act sets out certain factors that a jury must take into account when deciding whether an organisation is guilty of the offence:

- Whether the organisation failed to comply with any health and safety legislation;
- How serious that failure was;
- How much of a risk of death it posed.

What are the consequences of breaching the Act?

An organisation committing the offence will be subject to a trial in the Crown Court by judge and jury. The maximum penalty is an unlimited fine. In addition, the court may make:

- A remedial order requiring the organisation to remedy the management failure that caused the death.
- A publicity order requiring the organisation to publicise the conviction.
- A compensation order to pay compensation to the victim's family.

What can be done to reduce the risk of health and safety incidents and prosecution under the Act?

- Ensure that health and safety leadership within the organisation meets the standards set out in the joint guidance issued by the Institute of Directors and the Health and Safety Commission (the 'Guidance'). To view the full text of Guidance, please [click here](#).
- Consider whether safety management systems have been successful to date and whether improvements can be made.
- Consider carrying out an independent audit of health and safety management systems and health and safety compliance.
- Develop an incident response plan.
- Consider ways to strengthen the health and safety culture within the organisation, so that everyone takes responsibility for improving health and safety.