

Independent Guide

Corporate Manslaughter and Corporate Homicide Act 2007 - how could it affect my organisation?



Independent workplace compliance

Background

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force across the UK on 6 April 2008. Contrary to some reporting, it did not introduce any new safety laws or legal obligations but it has removed obstacles that had previously hampered the prosecution of, in particular, large companies. Prior to the introduction of the Act a company could only be convicted of the offence of "gross negligence, manslaughter" if a person considered to be the "guiding/controlling mind" of that company was convicted of the offence. In essence, the guilt or otherwise of the company was directly linked to the guilt or innocence of the individual. While in relatively small companies it can be easy to identify a possible "guiding/controlling mind", for larger companies it could prove impossible, and therefore very difficult for organisations to be found guilty of the charge.

Understanding the offence

Under the offence companies will be considered guilty of Corporate Manslaughter where a health and safety failure causes a death which amounts to a "gross breach" of a "duty of care" to the deceased. A gross breach means the organisation's conduct has fallen far below what could have been reasonably expected. It will consider how the fatal activity was managed or organised throughout the company, including what safety management systems were in place and how these were operated in practise. A substantial part of the failure within the organisation must have been at senior management level. The offence itself applies to, for example:

- Corporations/Partnerships
- Government Bodies
- Police Forces/Unions

However, the offence does not apply to certain public and government functions whose management involves wider questions of public policy that are already subject to other forms of accountability. The Act also reclassifies safety as a "grave criminal offence" and will therefore be tried in court in front of a jury. If convicted an organisation can expect penalties in the form of:

- Unlimited fine
- Remedial order - requiring the organisation to make good any health and safety deficiencies associated with the breach
- Publicity order - the guilty party having to advertise the fact that it is a "corporate killer", together with details of the offence and any fines or remedial orders imposed. The court would order the manner in which the publicity order would be carried out. It could be the national press, television, radio, and, potentially, even annual accounts, or a combination of these.

On the 1st February 2016 the Sentencing Council introduced a new definitive guideline for the sentencing of health and safety offences, corporate manslaughter and food safety and hygiene offences. The guideline considers the seriousness of the offence in terms of harm and culpability, categorises this as either Category A "indicate a high level of harm or culpability within the context of offence" or Category B "indicate a lower level of culpability" against which fines are calculated based on the organisation's turnover. The fine offence range is between £180,000 and £20,000,000.

Considerations

Organisations with a good health and safety culture and effective management in place should see the Act as causing little change to the way they operate. The key is to look at the process of how the business organises and manages its activities and adequately risk assesses and reviews these on an on-going basis. It is not just about having a policy in place, but how that policy is considered and implemented within the organisation. Employers already have a legal duty to report certain accidents/incidents at work, including work related deaths. Charges for health and safety breaches may also be brought at the same time as a prosecution for corporate manslaughter and it should also be remembered that the Health and Safety at Work etc. Act 1974 also considers the liability of individuals (as does the sentencing guidelines). The Government stated "that the (new) offence is intended to cover only the worst incidences of failure and therefore cases of Corporate Manslaughter/ Homicide following a death will be rare."

This guide is of a general nature; specific advice can be obtained from Assurity Consulting. Assurity Consulting is the UK's leading independent compliance consultancy specialising in workplace health, safety and environmental solutions. We have over 30 years' experience of helping customers of all sizes, from across all sectors, manage their compliance responsibilities, making sure that their organisation is compliant, their employees are safe, their processes are cost effective and their management team is in control.



ISO 9001:FS 24510
ISO 14001:EMS 84550
BS OHSAS 18001: OHS 590676

Assurity Consulting Limited

26 Redkln Way Horsham West Sussex RH13 5QH
t +44 (0)1403 269375 e info@assurityconsulting.co.uk
w assurityconsulting.co.uk

Registered in England and Wales Reg. No. 2227268
Corporate Member of IWFPM