



Corporate Manslaughter

On 6th April 2008 the Corporate Manslaughter and Corporate Homicide Act 2007 came into force throughout the UK. In Northern Ireland the new offence is called "corporate manslaughter". The Act only applies where the conduct or harm causing the death occurs on or after 6th April '08.

The new legislation is intended to work alongside other forms of accountability for organisations and individuals and existing health and safety legislation but its introduction means that in order to find an organisation guilty of manslaughter it is no longer necessary to find the person in control of the organisation guilty of an offence.

An organisation to which the Act applies is guilty of the offence of corporate manslaughter if death is caused by a gross breach of its duty of care that is substantially due to senior management failure. In order to find the organisation guilty of the offence the Court will need to consider how the fatal activity was managed or organised, the systems and processes that the organisation had for managing safety and how these were applied in practice. A substantial part of the failure on the part of the organisation must have been at senior level. Whilst individuals cannot be prosecuted under the new Act management are always vulnerable to prosecution for gross negligence manslaughter and for health and safety offences.

The organisations covered by the Act not only include private and public companies but also Crown bodies such as local councils, other government departments, police forces and charities. In addition a partnership, which is an unincorporated body and has no legal personality as such, can now also be prosecuted in the name of the partnership with fines being paid out of the partnership funds, but only if the partnership is an employer.

There are certain organisations and types of activities excluded either wholly or partially from the Act. Public bodies may be exempt for activities concerning public policy or public priorities, military activities are exempt as are police operations dealing with terrorism and violent disorder. Certain organisations enjoy partial exemption from the Act where the offence only applies where the death relates to the organisation's responsibility as an employer or as an occupier of premises. Examples of such organisations include the fire and rescue services, ambulance services (but not in relation to medical treatment) and child protection services.

Although maximum penalties have not been announced yet, proposals include a fine of up to 10 per cent of turnover, an order for the offending company to publish details of

convictions and fines as well as an order to take remedial steps to prevent similar accidents. The families of victims will of course also be able to seek compensation via the civil courts.

This is clearly a time for those persons who play a significant role in the management of an organisation to review their health and safety policies and procedures and to ensure that these are being effectively and correctly implemented. Management should be reviewing the work systems being used by employees, level of training and adequacy of equipment, issues of supervision, risk assessment processes and their organisation's general approach to health and safety arrangements. In considering whether an organisation is guilty of an offence under the Act the Courts will consider not just the systems but the organisation's attitude to the whole area of safety.

It is not necessary for organisations covered by the Act to comply with any new regulatory standards. The Act merely creates a link with existing health and safety laws. Those responsible for health and safety in any organisation would do well to remind themselves of the obligations imposed upon their organisation in that regard including any other specific requirements from regulatory bodies relevant to their specific organisation.

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