



Corporate Manslaughter

The Corporate Manslaughter and Corporate Homicide Act 2007 (the Act) received Royal Assent on 26 July 2007 and came into force on 6 April 2008. The Act introduced a new statutory offence of corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland. It means that an organisation whose gross negligence leads to death will face criminal prosecution for manslaughter. If found guilty, it will be liable for an unlimited fine.

The Act

The Corporate Manslaughter and Corporate Homicide Act 2007 (the Act) came into force on 6 April 2008, with the exception of certain limited provisions, and guidance was produced by the Ministry of Justice in October 2007. The Crown Prosecution Service (CPS) recently authorised the first charge of corporate manslaughter under the Act.

The offence

Organisations covered by the Act, including corporations and, where they are employers, partnerships and trade unions, will be guilty of the offence if the way their senior management organises or manages their activities:

- causes a person's death; and
- this amounts to a gross breach of a relevant duty of care owed to the deceased.

It is, therefore, concerned with the most serious incidents of management failure that result in death, which overcomes the obstacle that has historically made it very difficult to secure convictions against companies for corporate manslaughter – the doctrine of identification. This doctrine required a company officer to be proven, beyond reasonable doubt, to be guilty of gross negligence manslaughter, and to be identified as the 'controlling mind' of the company. The Act abolishes the common law offence of manslaughter by gross negligence in its application to organisations to which the offence applies.

Gross breach of duty of care

A 'relevant duty of care' for the purpose of the Act essentially equates to a duty of care owed by an organisation under the law of negligence. The Act specifies the applicable duties, which include a duty owed to employees or other workers, a duty owed to occupiers of premises, and duties owed in connection with activities such as the supply of goods and services, the carrying on of construction or maintenance operations or indeed any other activity on a commercial basis.

The test to determine whether there has been a 'gross breach' of any relevant duty of care is whether the conduct in question falls far below what can reasonably be expected of the organisation in the circumstances. In determining this issue, the Act requires the jury to consider whether the evidence shows that the organisation failed to comply with any health and safety legislation and guidance relating to the alleged breach and, if so, how serious that failure was. This will involve looking at senior management conduct, collectively and individually, to pinpoint the root cause of the failure to provide adequate practices and systems for managing the particular activities the organisation undertakes. The jury may also consider whether the evidence shows there were attitudes or accepted practices within the organisation that were likely to have encouraged the failure, or to have produced tolerance of it.

Senior management

The Act defines 'senior management' as those who play significant roles in either the making of decisions about how the whole or a substantial part of the organisation's activities are managed or organised, or the actual managing or organising of those activities. An organisation will be guilty of the offence only if the way its activities are managed or organised by senior management is a substantial element in the gross breach of a relevant duty of care that leads to death.

Whether the role of senior managers is significant is a question of fact and is intended to capture those whose role is decisive or influential. What amounts to a substantial part of the organisation's activities will vary but is intended to capture, for example, management decisions at regional level within a national organisation, or those responsible for overall management of particular divisions of an organisation's operations. The offence is designed to ensure that those with overall responsibility for the strategic management of an organisation's activities, as well as senior managers who set and monitor workplace practices, are culpable for their actions in the name of the organisation. It is not intended to capture immediate, operational negligence causing death, or the unpredictable acts of employees.

Conviction

Only relevant organisations can be liable for the offence, not individuals. The Act does not, therefore, increase liability for individual directors or managers, who can still be held to account through health and safety legislation and the common law of manslaughter. Also, an individual cannot be guilty of aiding, abetting, counselling or procuring the commission of the offence.

As a result, the Act provides for an unlimited fine in the event of conviction, rather than a term of imprisonment. The court is also given powers to make 'remedial orders' against convicted organisations, which can require them to remedy breaches of duty, and to make 'publicity orders' requiring them to publicise the conviction and the particulars of the offence (however, the provisions in the Act regarding publicity orders are not yet in force). Failure to comply with a remedial or publicity order is a criminal offence punishable by an unlimited fine. In November 2007, the Sentencing Advisory Panel

published a consultation paper on sentencing under the Act. The paper envisaged that fines would normally fall between 2.5 per cent and 10 per cent of the company's average annual turnover. Guidance is expected to be produced by the end of 2009.

The first prosecution

On 23 April 2009, the CPS authorised the first corporate manslaughter prosecution under the Act, against Cotswold Geotechnical Holdings Limited. The charge was brought after an employee was killed by a pit collapsing on top of him while he was taking soil samples.

The company also faces charges for offences under the Health & Safety at Work Act 1974 (HSWA) and a director of the company has been charged with gross negligence manslaughter and offences under the HSWA. The director is due to appear in court on 17 June 2009, facing charges both as an individual and on behalf of the company.

Public authorities

The Act lifts Crown immunity, enabling relevant public authorities to be prosecuted for the offence, subject to some exceptions. It applies to a number of public authorities listed in a Schedule, which includes government departments, and the Schedule can be amended by order. The offence also applies to the police and to the armed forces, other than in relation to certain operational and military activities. As a result of the last-minute amendments to the Bill in parliament, the offence also extends to deaths in custody. However, the government indicated that this aspect of the offence would not come into force for around three years from the date the Act received Royal Assent.

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