

## Corporate Manslaughter: What You Need To Know

The Corporate Manslaughter and Corporate Homicide Act 2007 comes into force on 6 April 2008, and all businesses must therefore take a look at their existing health and safety regulations, if they don't want to face an unlimited fine plus potential humiliation by 'name and shame'.

The new offense of corporate manslaughter is committed where an organization commits a 'gross breach' of a 'relevant duty of care', leading to a person's death. This recent change to corporate law and health and safety law means that it will no longer be necessary to identify an individual director guilty of gross negligence, all that is required is an organizational or gross management failing causing death.

### What happened in the past

Under the existing common law provisions, to punish an organization appropriately, the Prosecution have to prove 'gross negligence manslaughter' by an individual who is part of the 'directing mind' of the organization which caused or contributed to the death.

This has proved to be an almost insurmountable task, particularly in relation to large organisations where, in reality, there is no one individual who could properly be considered part of the 'directing mind' of the organization.

As a result, governments have long been under pressure to update corporate law and health and safety law in order to force businesses to be brought to justice in the case of gross negligence leading to the death of a worker.

### A shift of focus

The new offense of corporate manslaughter will be committed if the way in which a business' senior managers organize or manage the activities causes a person's death and this amounts to a gross breach of a relevant duty of care owed by the organization to the deceased.

The shift of focus - from the 'directing mind' to senior managers - in the new offense is considered to make it easier to obtain successful convictions.

### What must businesses do now?

Organizations should prepare themselves for the changes in corporate law and health and safety law by undertaking a complete and thorough review of their safety management systems and of how they are practically implemented. This will necessarily incur costs but these costs are likely to be a fraction of any potential penalty if found guilty of corporate manslaughter.

### The penalty

Of course, companies cannot be sent to prison, so the penalty usually imposed is a financial one. The Sentencing Guidelines Council have suggested that on conviction for an offense of corporate manslaughter, the court, as a starting point, should impose a fine which is equal to 5% of the organization's annual turnover, with the ability to go up to 10% or more if there are aggravating factors. This would, for most companies, represent a very large fine indeed.

In addition to a fine, courts can compel the organization to 'advertise' their conviction in the local or national press on the basis that a 'name and shame' culture may send a message to other businesses. The idea is that the stigma of being convicted of corporate manslaughter could have a devastating affect on a business, and the threat will cause businesses to take more care with their health and safety regulations.

## About the Author

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