

REGULATORY OVERVIEW

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The Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act ('the Act') was given Royal assent in July 2007 and came into force on 6 April 2008. Under this Act, for the first time companies and organisations can be found guilty of corporate manslaughter or homicide as a result of serious management failures resulting in a gross breach of a duty of care. In England, Wales and Northern Ireland the offence is called corporate manslaughter, and in Scotland, it is called corporate homicide. Penalties for offences under the Act include fines, remedial orders and publicity orders. The following is a general overview of the Act and how it may affect you.

GENERAL OVERVIEW

Who is Affected?

The Act only applies to 'organisations', which are defined as:

- Corporations
- Partnerships, trade unions or employers' associations that are employers
- Specifically listed governmental departments, such as the Ministry of Defence or the Department for Transport
- Police forces, subject to certain exemptions

While prosecutions under this Act only apply to organisations and not to individuals, individuals such as directors, board members and senior managers can still be prosecuted under common law for gross negligence manslaughter and for separate health and safety offences.

The Offence

Qualifying organisations are found guilty of corporate manslaughter or homicide if the way in which their activities are managed or organised:

- Causes a person's death; and
- Amounts to a gross breach of a relevant duty owed by the organisation to the deceased.

Additionally, an organisation is only guilty of an offence if the way in which senior management managed or organised activities is a substantial element of the offence. 'Senior management' is defined as persons who play significant roles in managing, organising or making decisions for a substantial part of the activities. Exactly who is a member of an organisation's senior management will depend on the nature and scale of the organisation's activities. Apart from directors and similar senior positions, roles can include regional managers in national organisations and managers of different operational divisions.

What is a 'Relevant Duty of Care'?

In order for an organisation to be found guilty of corporate manslaughter or homicide, there must be a gross breach of a 'relevant duty of care'. Whether an organisation owes a duty of care to a particular individual is a question of law and a judge will make any findings of fact necessary to decide.

A relevant duty of care can be any of the following duties an organisation owes under the law of negligence:



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- A duty owed to its employees or to other persons working for the organisation
- A duty owed as occupier of the premises
- A duty owed in connection with
 - The supply of goods and services
 - Carrying out construction or maintenance operations
 - Carrying out any other activity on a commercial basis
 - Using and keeping plant, vehicles or other things
- A duty owed to an individual who is detained (for a listed reason in the Act), and the organisation is responsible for the individual's safety

In the majority of cases, relevant duty of care will likely arise in a health and safety context. Therefore, organisations need to keep health and safety policies and management systems under review, particularly the way in which health and safety activities are managed and organised by senior management.

A Gross Breach

A breach of duty by an organisation is considered a 'gross breach' if the conduct alleged to amount to a breach of duty falls far below what can reasonably be expected of the organisation in the circumstances. The Act sets out guidelines for juries when deciding whether there was a gross breach of duty, including the following:

- Juries **must** consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so:
 - How serious that breach was
 - How much of a risk of death it posed
- Juries **may** also consider:
 - The extent to which evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failures or produced tolerance of them
 - Any health and safety guidance that relates to the alleged breach

The Act does not preclude juries from taking into consideration any other matters they consider relevant.

Exemptions

The Act also sets out exemptions for certain public and government functions, meaning that corporate manslaughter or homicide will not apply to deaths connected to the management of these particular activities. There are two main types of exemptions: comprehensive and partial exemptions.

- Comprehensive exemptions are activities where corporate manslaughter or homicide does not apply with respect to any duty of care that an organisation might otherwise owe. Comprehensive exemptions include:
 - Public policy decisions
 - Military activities
 - Policing and law enforcement

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- Partial exemptions are activities where corporate manslaughter or homicide does not apply unless the death is related to the organisation's responsibility as an employer or occupier of premises. Partial exemptions include:
 - Emergency circumstances for certain organisations, including fire and rescue authorities, relevant NHS bodies, ambulatory services and armed forces
 - Child-protection and probation functions by local authorities or other public authorities and boards under specific acts
 - Functions carried by the government using prerogative powers, such as acting in a civil emergency
 - Functions that, by their nature, require statutory (or prerogative) authority. The activity must be of a sort that cannot be independently performed by a private body, such as licensing drugs or conducting international diplomacy.

Penalties

Any organisations convicted of corporate manslaughter are subject to:

- Unlimited fines. There is no upper limit to what the amount of the fine can be.
- Publicity orders. A publicity order requires organisations to publicise their convictions and specific details of the offence, the amount of any fine imposed and terms of any remedial order made.
- Remedial orders. A remedial order requires organisations to take specified steps to remedy the cause of death, including deficiencies regarding relevant policies, systems or practices.

REVIEW

To be convicted of an offence under the Act, the following needs to be proved:

- The defendant is a **qualifying organisation**.
- The organisation **caused the individual's death**.
- The organisation **owed a relevant duty of care** to the deceased.
- The organisation **grossly breached** that relevant duty of care.
- A substantial element of the breach was the way **senior management** managed or organised activities.
- The organisation does not fall within an **exemption** under the Act.

If the offence of corporate manslaughter is proven, organisations are subject to **unlimited fines, publicity orders and remedial orders**.

For a copy of the Act and additional guidance from the Ministry of Justice, please see www.legislation.gov.uk and www.justice.gov.uk/legislation/bills-and-acts/acts/corp-hom-manslaughter-act-2007.