

# New Corporate Manslaughter offence

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## Introduction

The Corporate Manslaughter and Corporate Homicide Act 2007 came into effect on 6 April 2008. The new legislation will extend to the whole of the United Kingdom. In addition to regulating corporations, the Act also applies to partnerships, trade unions and employers' associations.

Up to now, although at common law a company could be prosecuted for manslaughter, prosecutions have been rare and the legislation is the result of public outrage at a number of failures to successfully prosecute high profile corporations for deaths related to gross corporate failings.

## The offence

An organisation will be guilty of the offence of corporate manslaughter if the way in which its activities are managed or organised, causes a person's death, and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. Liability will be determined by examining the management or organisational failings of the organisation. A necessary component will be that the way a corporation's activities are managed or organised by its senior management is a substantial element in the breach of the relevant duty.

## Senior Management

Senior management is defined in two distinct ways:-

- Those who play a significant role in the making of decisions about how the whole or a substantial part of the company's activities are to be managed or organised
- Those who play a significant role in the actual managing or organising of the whole or a substantial part of those activities.

The culpable management practices of an individual senior manager, senior managers or the collective management of a company may be viewed as the conduct of senior management.

## Management Activities: a substantial element in the breach of duty

Liability under the Act will only crystallise if the management activities or organisation of a company's senior management was a substantial element in the breach of a relevant duty of care. A key to defending a charge of corporate manslaughter, especially in the context of a large company with complex tiered management structures, will be the level at which the most significant management failings took place and whether this is below the level of senior management.

## Duty of Care

Liability for corporate manslaughter will only be established if the management or organisation of activities resulting in the death of a person also amounts to a gross breach of a duty of care owed by the organisation to the deceased. A breach of such a duty is to be established under the law of negligence. The legislation requires the duty of care to be related to specific corporate functions or activities.

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In determining this issue, the jury will be permitted to consider the extent to which the evidence establishes attitudes, policies, systems or accepted practices within the company that could have encouraged or alternatively produced tolerance of the management or organisational failure of the company in respect of the breach. The jury may also have regard to any health and safety guidance that relates to the alleged breach and any other factor that it considers relevant to the case.

## **Penalty**

If a company is convicted of corporate manslaughter it is liable to an unlimited fine. The courts may also order the company to remedy any failings which led or contributed to the gross breach of duty.

## **Implications**

This change in legislation may have serious consequences for businesses who must take steps to ensure that adequate risk management processes are in place and properly documented to avoid potential criminal liability.

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