

UK Corporate Killing Laws in Force



New corporate killing legislation is in force in the UK from 6 April 2008. The Corporate Manslaughter and Corporate Homicide Act 2007 creates one offence with two names: corporate manslaughter in England and corporate homicide in Scotland. The new Act means that organisations are at far greater risk of prosecution for corporate homicide following any death at work. The level of fines likely to be imposed where a death has occurred will also increase dramatically, with multi-million pound fines for larger organisations becoming the norm, if recent proposals are adopted.

The Offence

The offence occurs where, in the opinion of the jury, an organisation's activities are managed or organised in a way which:

- (a) Causes a person's death;
- (b) Amounts to a gross breach of a relevant duty of care; and
- (c) Senior management failure is a substantial element of the breach.

Senior management failure requires to be an element in any chain of events causing the death, but not necessarily the immediate cause which, it is recognised, will normally be some act or omission of an individual. The jury are entitled to find sufficient management failure where an organisation fails to anticipate a foreseeable act of individual

negligence or take effective steps to prevent it. A breach is a "gross breach" where the conduct falls "far below" what can reasonably be expected of the organisation in the circumstances. It is for the jury to decide in each case, whether the negligence involved was so gross that it should amount to a breach of the 2007 Act and not simply a breach of health and safety legislation. A duty of care will generally be owed by employers, occupiers and suppliers of goods and services, to employees, customers and others likely to be affected by their business activities.

Territorial Application

The Act applies anywhere in the UK and its territorial sea. It applies beyond the territorial sea to the whole of UK Continental Shelf in relation to offshore activities and on British registered vessels (including certain mobile installations) anywhere in the world. It is the place where the harm leading to death occurs which is relevant not the location of the organisation. Accordingly, foreign organisations are subject to the provisions of the Act in the same way as those based in the UK.

Penalties

The penalty on conviction is a criminal fine. There is no limit to the level of fine which can be imposed. The Sentencing Advisory Panel for England and Wales have proposed that a fine amounting to 5% of the offender's average gross annual turnover during the three years prior to sentencing would be an appropriate starting point with fines up to 10% of turnover applied where there are aggravating factors. The Sentencing Guidance will not apply directly in Scotland but the Scottish judiciary are entitled to have regard to it and it will no doubt be argued that there should be consistency between both UK jurisdictions.

The other penalties available under the Act are a remedial order, where the prosecution may apply to the Court for an order specifying further measures which the organisation must take to remedy defects in its safety management system, and a publicity order, where the Court orders the organisation to publicise, in a specified manner, the conviction, details of the offence, the amount of any fine and the terms of any remedial order made.

Increase in prosecutions

The Health and Safety Executive's enforcement policy is generally to prosecute where a death has resulted from a breach of the Health and Safety at Work Act 1974 Act. It is too early to say whether

organisations will also face charges of corporate homicide. Although prosecutions should only occur in cases of “gross breach” there is considerable uncertainty about how that will be interpreted in practice. Unless there is some means by which the prosecuting authorities can objectively assess whether or not a breach is a “gross breach” the temptation will be to leave the decision to the jury and prosecute for corporate homicide in every fatal case. The UK Government have estimated that there will be between 10 and 15 prosecutions for corporate manslaughter or corporate homicide a year. Under the common law the average was one or two a year.

Organisations should be aware that there is now a significant risk of prosecution for corporate homicide in relation to any death at work after 6th April 2008. There are a number of proactive steps those responsible for managing health and safety can take including developing and implementing a safety management system which will minimise the risk of a successful prosecution. Further, in the event that a death occurs it is essential that the senior management team obtain legal advice on their collective and individual responsibilities without delay.

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