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Corporate Manslaughter and Corporate Homicide Act 2007 1/2

Corporate Manslaughter and Corporate Homicide Act 2007

The current law

The Act creates a new statutory offence of corporate manslaughter which will replace the common law offence of 'manslaughter by gross negligence' where corporations are concerned. Note – it does not replace/abolish the old common law offence which can be committed by an individual.

The aim of the Act is to bring senior managers of organisations to account for breaches of duty of care owed under health & safety legislation.

Under the current law, there must have been a gross breach of a duty of care owed to the victim by a single individual.

It has been virtually impossible under this current regime to bring a successful corporate manslaughter case because the prosecution must show that one person who was the 'directing' mind of the company committed the reckless or negligent acts or omissions which led to the accident.

Provisions of the Act

From 6 April 2008, as far as companies are concerned a company will be guilty of an offence under the new Act if the way in which any of its activities are managed or organised by its "senior managers" causes a person's death and that action amounts to a gross breach of the relevant duty of care owed by the company.

Relevant duty of care

A relevant duty of care is a duty owed by the organisation under the law of negligence. The covers duties owed to employees, other persons working for the organisation and in connection with the carrying on of any construction or maintenance operations.

Duties of care are also owed to persons being transported in a vehicle (when not being transported in response to an emergency situation – see below).

The Act sets out duties of care owed by a number of organisations including the Ministry of Defence, the police, the emergency services and local authorities which are not "relevant duties of care" as defined under the Act.

In particular duties of care which are excluded when responding to circumstances are:

- the supply by the organisation of goods or services (whether for consideration or not),
- the carrying on by the organisation of any construction or maintenance operations,
- the carrying on by the organisation of any other activity on a commercial basis, or
- the use or keeping by the organisation of any plant, vehicle or other thing;

Senior managers

The Act defines "senior managers" as those individuals playing a significant role in the making of decisions about the whole or a substantial part of an organisation's activities or those actually managing or organising the whole or a substantial part of those activities.

Two main criteria must therefore exist before an individual would constitute "senior management":

they must play a role in making management decisions about, or actually managing, the activities of the organisation **as a whole or a substantial part of it**; and

the individual must play a **significant role**.

The idea is to analyse the working practices of the organisation rather than looking at immediate operational negligence causing death or unpredictable acts of employees.

By using the collective term of senior management, the Act side-steps the issue of identifying the "directing mind". It is not, however, intended to involve aggregating together individuals' conduct to identify a gross management failure.

Instead, the new offence is targeted at failings in the strategic management of an organisation's activities.

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How severe does the breach have to be?

In order for proceedings to be brought against an organisation, there must have been a **gross** failure by senior management leading to **death**.

The aim is to target the most serious management failings that warrant the application of a serious criminal offence. This is defined as conduct that falls "far below" what can reasonably be expected of the organisation in the circumstances.

In assessing how serious any failure was, a jury should take into account whether or not the senior managers of the organisation:

- knew, or ought to have known, that the organisation was failing to comply with that legislation or guidance;
- were aware, or ought to have been aware, of the risk of death or serious harm posed by the failure to comply; or
- sought to cause the organisation to profit from that failure.

Organisations not individuals

The offence under the Act will only apply to the company, not to directors or other senior managers, despite the requirement that it is their management or organisation of the company's activities which caused the death.

The Act makes it clear that an individual cannot be guilty of secondary liability for aiding and abetting, counselling or procuring the offence. Such person will remain liable for the common law offence of gross negligence manslaughter.

Penalties

If convicted, under the Act, an organisation risks an unlimited fine. The court is also empowered to make a remedial order, i.e. an order to remedy the working practices/defects which led to the death in the first place.

An organisation that fails to comply with a remedial order is guilty of an offence and liable on conviction on indictment to an unlimited fine.

The court can also require the organisation to publicise details of the conviction stating

the particulars of the offence, amount of the fine and terms of any remedial order. Failure to comply with a publicity order is also an offence and liable on conviction on indictment to an unlimited fine.

How can you protect your company?

Some measures can be put in place to ensure that 'senior managers' are given training on what their roles and responsibilities are, particularly under current health and safety legislation.

The more a company or organisation can do to show that it has implemented policies and procedures to prevent the risk of death being caused or a breach of duty owed to the victim, the better defence it will have against an allegation of corporate manslaughter or homicide.

Contacts

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The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.