

Corporate Manslaughter Act

More people are killed at work than die in wars each year.

In the UK about 400 people (employees, self-employed people, and members of the public) are killed in incidents through the operation of commerce each year. From 6 April 2008, companies and organisations can be prosecuted for gross failings in relation to the management of health and safety, where such failings have resulted in fatalities.

The Corporate Manslaughter and Corporate Homicide Act introduces this new offence UK-wide, and is the result of a realisation that the common law principles of manslaughter (which deal with individuals) do not cover the prosecution of companies.

Why has the government introduced this act?

There was a certain amount of inequality, as small businesses were being prosecuted more than larger companies due to a hands-on approach by SME directors. In larger companies, it was harder to prosecute as blame could not be apportioned to one single person. The act removes the obstacle to convicting larger companies.

Previous instances of transport or construction companies being implicated in fatalities include:

- The 1997 Southall rail crash: a high-speed train passed a red signal and collided with a freight train, killing seven and injuring 151 people. The train had a faulty automatic warning system and was being operated with it switched off. In addition, the automatic train protection system was inoperative, and there was no second driver in the cab.
- The capsizing of a P&O Ferry in 1990, resulting in the deaths of 192 people.
- The Paddington crash of 1999, when a train went through a red light and hit another train in west London, killing 31 people. Over 400 people were injured.

All of these instances were the result of failure in Health & Safety management within each company, and could not be attributed to be the fault of any one individual. Now, with the introduction of the new Act, companies can be held accountable. This includes the UK's 2.3 million companies, partnerships, trade unions, and some non-commercial organisations. In the wake of parliamentary debate, the new law will also apply to deaths in custody, resulting from gross negligence in the prison service or from those controlling police cells.

How will it be applied?

According to the Ministry of Justice, Employers will now legally be obliged to report certain incidents at work, including work-related deaths. The police will lead an investigation if a criminal offence (other than under health and safety law) is suspected. They will work in partnership with the HSE, local authority or other regulatory authority.

The Government expects that cases of corporate manslaughter/homicide following a death at work will be rare as the new offence is intended to cover only the worst instances of failure across an organisation to manage health and safety properly.

Cases of corporate manslaughter will be prosecuted by the Crown Prosecution Service in England Wales and Public Prosecution Service in Northern Ireland. Corporate homicide cases will be prosecuted by the Procurator Fiscal in Scotland.

Health and safety charges may be brought at the same time as a prosecution for the new offence, as well as in cases where it is not prosecuted.

An organisation found guilty of the offence will be liable for an unlimited fine, estimated at between 2.5 and 10% of the company's annual turnover. This means that the current record of £15m could soon be exceeded.

The Act also allows for the imposition of a publicity order, requiring the organisation to publicise details of its conviction and fine. Sentencing guidelines will be available in the autumn of this year.

Public and government functions that are already open to other forms of accountability are to be exempt from the Act, for example, those who apply the spending of public money or military operations. Equally, police forces, child protection agencies and the emergency services are exempt. The new office will, however, apply to the management of custody, although this will be applied at a later date.

Cause for concern?

Companies with secure and efficient Health & Safety Policies should not be overly anxious, however. The new Act will serve only to prosecute those companies that have been shown beyond any reasonable doubt to have recklessly risked the lives of others. An individual cannot be prosecuted under this act, and nobody can be imprisoned. Individuals will still however fall under the Gross Negligence Manslaughter Act.

For legal reasons, the new offence is called "corporate manslaughter" in England and Wales and Northern Ireland and "corporate homicide" in Scotland.

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About the Author

Paul Avis has established an unrivalled understanding of the value of employee engagement in the modern workplace. Having worked alongside some of the leading specialist healthcare advisers and most of the leading benefit consultancies, insurers and with clients such as the NHS, Local Government and the HSE, he has established himself as a leading voice on topics including absence management, employee wellness initiatives and managing disability