

The Act applies to work related deaths that occurred on or after 6 April 2008. The Act provides for a statutory offence of corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland.

- It applies to companies and other corporate bodies (in the public and private sector), partnerships that are employers, and bodies such as Government departments and police forces. The organisation must owe the deceased a duty of care connected with the organisation's activities; It is not confined to a duty of care by employers, extending to third parties including occupiers of premises, construction works, suppliers of goods and services, use of vehicles etc and all commercial activities, thus requiring demonstration of safety and quality checks.
- Prosecution difficulties previously arose from the requirement for the identification of an individual 'controlling mind' to be found personally guilty, before a corporate manslaughter charge could be brought. The new Act abolishes this requirement. The Act provides no new legal obligations, but provides a platform for a single or series of collective errors resulting in death to be considered as a criminal charge and brought before the courts.
- A 'senior manager' is someone who plays a significant role in making decisions about how the whole or a substantial part of its activities should be managed or organised, or who is actually responsible for managing those activities. This will be a question of fact in each case, but is clearly capable of including executive and non-executive directors. It is the breach of a duty by 'senior management' that gives rise to liability with the focus being on the collective management of the organisation, not the activities of a single individual.
- A successful prosecution under the Act requires the establishment of a 'gross' breach relevant to an established duty of care, and that a substantial element of that breach was because of the way those activities were managed or organised by senior management. Consideration whether the organisation failed to comply with health and safety legislation and if so how serious that failure was and how much of a risk it posed. The jury may also consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any failure or to have produced tolerance of it.
- Organisations should be mindful of hiding behind a veil of compliance or third party certification to management systems as being sufficient. The Act enables the investigation and interrogation of organisations that pay lip service to such matters, demanding evidence of a pro-active and holistic interdepartmental management (i.e. non silo) approach to health and safety that is embedded in the wider culture of the organisation and led from the most senior management positions.
- There are three possible sanctions for a breach of the Act: an unlimited fine and/or a 'remedial order' and/or a 'publicity order'. Failure to comply with a remedial or publicity order is a criminal offence punishable by an unlimited fine. A remedial order requires the organisation to take steps to remedy the management failure, including any deficiencies in health and safety policies, systems or practices. A publicity order requires the organisation to publicise the conviction and may require publication in a specified manner of the fact of conviction, specified particulars of the offence, the amount of any fine and the terms of any remedial order. Guidance as to how courts should use the possible sanctions was issued by the Sentencing Guidelines Council in February 2010 in its definitive guideline "Corporate manslaughter and health and safety offences causing death".
- The guidelines are clear that fines must be punitive and significant. The appropriate fine for an offence of corporate manslaughter will rarely be less than £500,000 and may be measured in millions of pounds. Where other health and safety offences cause death, the appropriate fine is unlikely to be less than £100,000.
- Additional financial impacts will result through loss of faith and goodwill from customers following the issue of a publicity order, requiring an organisation to publicise the death and conviction of a criminal manslaughter charge within the media. A rectification order is also available to the courts.



Individual senior managers cannot be liable for the offence of corporate manslaughter. However, the Act does not preclude individuals being prosecuted in their own right for primary liability offences including gross negligence manslaughter under the common law (which is unaffected by the Act in relation to individuals) and/or breaches of other health and safety legislation.

Best practice standards

✓	Directors and senior management review of the organisation and responsibilities for health and safety i.e. 'Managing the activities' and 'engagement of safety culture'.
✓	Visible input from a proactive and systematic H & S management system inclusive of monitoring, auditing and review e.g. HSG65 or BS OHSAS 18001.
✓	Knowledge, awareness and implementation of HSE/IOD Guidance INDG417
✓	Senior management involved to lead change management issues through the business
✓	Effective process for risk assessment and review of adequacy of controls
✓	Monitor and benchmark against appropriate performance metrics
✓	Integration of all management systems into one e.g. quality, environment and H & S.

Guidance and useful information

- Corporate Manslaughter and Corporate Homicide Act 2007
www.legislation.gov.uk/ukpga/2007/19/contents
- HSE: INDG417 Leading health and safety at work
www.hse.gov.uk/pubns/indg417.pdf
- Sentencing Guidelines Council:
www.sentencingcouncil.judiciary.gov.uk/docs/web__guideline_on_corporate_manslaughter_accessible.pdf



Further information

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