

WHEN FATAL ACCIDENTS HAPPEN

A brief review of the Corporate Manslaughter & Corporate Homicide Act 2007 by Jon Wilby, head Commercial Litigation Partner.



The Corporate Manslaughter & Corporate Homicide Act 2007 comes into force on 6 April 2008.

The Act finally fulfils the Governments 10 year long promise to introduce this legislation and reflects the increasing scrutiny and public accountability of businesses.

The primary purpose of the Act is to better protect employees and members of the public when failures on the part of large corporations lead to death. Under the previous common law offence of involuntary manslaughter by gross negligence as it applied to organisations, large companies with complex management structures were difficult to prosecute. There have been a number of unsuccessful corporate manslaughter prosecutions following public disasters such as the Herald of Free Enterprise ferry disaster in 1987 and the Southall rail disaster in 1997.

However, the Act is not limited to large corporations but it applies to all companies and to partnerships which are employers. The practical reality is that with a greater prospect of a successful prosecution following a potentially avoidable death in a business or employment context, police investigations are likely to increase and more individuals will be caught up in the process.

The Act does not replace existing health & safety laws or the common law offence of manslaughter by gross negligence which will continue to apply to individuals. Therefore, if a company is prosecuted under the new Act, the company (and/or its directors and managers) could still be prosecuted for other offences relating to the same matter.

The offence of corporate manslaughter (known as Corporate Homicide in Scotland) is dealt with only in the Crown Court by a Judge and Jury. The maximum penalty is an unlimited fine and although sentencing guidelines are yet to be established, the consultation document to the Act proposed that fines should be in the range of 2.5% to 10% of average annual turnover. The court can also make a "remedial order" requiring the organisation to take steps to remedy the failure(s) that resulted in the death and also a publicity order forcing the organisation to publicise the conviction.

The prosecution must prove that the death was caused by a gross breach of a duty of care owed by the organisation to the deceased. "Gross breach" means conduct which falls far below what can reasonably be expected of the organisation in the circumstances. Any police investigation will therefore be concerned with how the health and safety of activities are managed within the organisation and the adequacy of those arrangements. Investigations will therefore be wide-ranging and will cover all levels of management and business operations.

The Act covers the following types of duty of care owed by an organisation:

- To employees or other persons working for the organisation
- As an occupier of premises
- In the supply of goods or services
- In the carrying out of any construction or maintenance operations
- In the carrying out of any other activity on a commercial basis

Therefore, most day-to-day business activities will be covered by the Act.

Every responsible business organisation will already want to take all practical steps to remove or to reduce the risk of injury or death resulting from matters that are within its control. However, the coming into force of the Act does focus attention on the potential for criminal liabilities (from which civil compensation claims are also likely to arise) if a fatality occurs. Investigations could lead to the prosecution of the organisation and/or individuals for other offences.

Immediate practical steps that ought to be taken by any business organisation are firstly to be aware of your responsibilities. Helpful guidance is available from the Health & Safety Executive (www.hse.gov.uk) and the Institute of Directors (www.iod.com).

Band Hatton can help with a review of your health and safety systems to ensure that they are effective and that you are complying with all legislation that is relevant to your organisation.

Internally, organisations must ask themselves whether those systems are rigorously followed or are breaches tolerated. What are the health and safety attitudes and informal policies or accepted practices within the organisation? These are the matters that an investigation following a fatal accident will focus upon.

A further practical suggestion is that many organisations carry liability insurance to cover legal costs arising from the prosecution of a director or owner of a business in such circumstances. It is recommended that insurance should now be extended to cover the organisation itself in the event of a prosecution under the Act.

To discuss any of the issues raised in this article please contact our Litigation Department Administrator on 024 7649 3117.