

# Corporate Manslaughter and Corporate Homicide Bill

After a slow progression through Parliament and lengthy debate, the Corporate Manslaughter and Corporate Homicide Bill received Royal Assent on 26 July 2007.

**Q What offence is created by the new:**

## Corporate Manslaughter and Corporate Homicide Act 2007?

**A** The Act creates the new statutory offence in England, Wales and Northern Ireland of "corporate manslaughter", and in Scotland of "corporate homicide".

A company will be guilty of the new offence if the way in which its activities are managed or organised, by its senior management, amount to a gross breach of the duty of care it owes to its employees, the public or other individual and those failings caused the person's death.

Companies and government bodies face prosecution if they are found to have caused a person's death due to their corporate health and safety failings.

**Q How does the Act differ from the current law?**

**A** The current law links a company's guilt to the gross negligence of an individual who is said to be the embodiment of the company. It has proved very difficult to prosecute large organisations, and the only successful prosecutions have been against small companies where the director and company are essentially one and the same.

The new Act seeks to address this difficulty by focusing on the way in which a company's activities are managed or organised, and it is not reliant on one individual being found guilty of gross negligence manslaughter. The courts will now be able to consider the wider corporate picture, looking collectively at the actions, or more appropriately the failings, of the company's senior management.

**Q Who will be considered to be "senior management"?**

**A** A company will be guilty of the new offence if someone has been killed as a result of the gross failure of a company's senior managers - for example, where they fail to ensure safe working practices. Senior management is defined in the Act as those persons who play a significant role in the decision-making process about how the company's activities are managed and organised. But there has been lots of debate about what constitutes "senior management". The answer will be different in each case, depending on the size and structure of the business involved.

**Q What will amount to a gross management failure?**

**A** To secure a conviction, the prosecution must prove that the management failure amounted to a "gross breach" of the duty of care owed to the deceased. When determining this, the jury should consider whether the evidence shows that the company's conduct fell far below that which could reasonably have been expected of it. Factors that will be taken into account include whether the organisation failed to comply with any relevant health and safety legislation, and if it did, how serious that failure was, and how much of a risk of death it posed. The jury may also consider the extent to which the evidence shows there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged, or tolerated, such failings.

**Q When will the Act come into force?**

**A** It will come into force on 6 April 2008, and it is expected that the Ministry of Justice will publish further guidance this autumn. When the Act initially comes into force, it will not apply to deaths that occur in police custody or prison. It is likely this part of the legislation will come into force later.

**Q Will the new Act affect individuals?**

**A** The new Act is about corporate responsibility and liability, and is not concerned with increasing the liability of individuals, who can already be held to account through existing health and safety legislation and the common law offence of gross negligence manslaughter.

The Act attempts to create a more effective method for prosecuting companies, with the focus being the worst cases of management failure that have resulted in death. It is hoped that the effect of a possible conviction, and resulting penalties, will be a sufficient incentive for companies that consistently fail to meet proper standards to improve and provide their employees with safer working environments.

**Q What penalties will a company face?**

**A** Penalties include an unlimited fine, remedial orders and publicity orders. A remedial order will require an organisation to take steps to remedy any management failure that led to death. The court can impose an order publicising the fact the company has been convicted of the offence, providing details, the amount of any fine imposed and the terms of any remedial order made