Circular 2011/07

TITLE
CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007 COMMENCEMENT (NO. 3) ORDER 2011 AND CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007 (AMENDMENT) ORDER 2011

From:
Criminal Law and Legal Policy Unit
Ministry of Justice

Distribution date:
1 September 2011

Implementation Date:
1 September 2011

For further information contact:
See end of document

Broad subject:
Criminal Justice

Sub category:
Corporate Manslaughter and Corporate Homicide Act 2007

This circular is being sent to:
Lord Chief Justice, President of the Queen’s Bench Division, Senior Presiding Judge, Justices of the Supreme Court, Lords Justices of Appeal, High Court judges, Crown Court judges, District Judges (Magistrates’ Courts), Bench Chairmen, Clerks to the Justices, Chief Officers of Police, Chief Crown Prosecutors and CPS Central Casework Divisions, Coroners’ Society of England and Wales.

Copies are being sent to:
Judicial College, Council of Circuit Judges, Magistrates' Association, Justices' Clerks' Society, Registrar of Criminal Appeals, HMCTS Area Directors, Crown Court Managers, HM Chief Inspector of Constabulary, ACPO, Police Federation, Police Superintendents' Association, Chairpersons of Police Authorities, the Law
Society, the Bar Council, the Criminal Bar Association, Whitehall Prosecutors' Group, Legal Services' Commission, Law Centres, Citizens Advice Bureaux
CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007
COMMENCEMENT (NO. 3) ORDER 2011 AND CORPORATE
MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007
(AMENDMENT) ORDER 2011

1. This circular should not be regarded as providing legal advice. Legal
advice should be sought if there is any doubt as to the application or
interpretation of the legislation.

2. This circular should be read in conjunction with:

- The circular issued on 19 February 2008 on the Corporate
  Manslaughter and Corporate Homicide Act 2007 (available on the
  Ministry of Justice website at
  http://www.justice.gov.uk/publications/bills-and-acts/circulars/corporate-
  homicide-manslaughter-act.htm
  )

- The explanatory notes to the Corporate Manslaughter and Corporate
  Homicide Act 2007 (available here:
  )

- The explanatory memorandum sent to the Parliamentary Committee on
  the Merits of Statutory Instruments and Joint Committee on Statutory
  Instruments, covering the Corporate Manslaughter and Corporate
  Homicide Act 2007 Commencement (No. 3) Order 2011 and Corporate
  Manslaughter and Corporate Homicide Act 2007 Amendment Order
  2011 (the Orders). The Orders and associated Explanatory
  Memorandum are available here:
  and

I. Introduction and background

3. The Corporate Manslaughter and Corporate Homicide Act 2007 created
a statutory offence of corporate manslaughter whereby an organisation
 can be found guilty if the way in which its activities were managed or
organised caused a death and amounted to a gross breach of a relevant
duty of care to the deceased. A substantial part of the breach must have
been in the way activities were managed by senior management.

4. Most of the Act came into force on 6 April 2008, except for the so-called
custody provisions. These are contained in section 2(1)(d) and 2(2) of
the Act. The Commencement Order brings these into force on 1st
September 2011. This means that, from that date, an organisation
(including a Government Department) can be convicted of a corporate
manslaughter offence if the way in which its activities were managed or
organised caused a person’s death and amounted to a gross breach of
the duty of care owed to the deceased by virtue of that person being
held in custody.

5. The Amendment Order, which comes into force at the same time as the
custody provisions are commenced, widens the scope of section 2(2) of
the Act to include two categories of persons not already covered by the Act. They are persons detained in Service custody premises which are the responsibility of the Ministry of Defence and persons detained for customs purposes in custody areas of UK Border Agency offices.

II. Changes effected by the Corporate Manslaughter and Corporate Homicide Act 2007 Commencement (No. 3) Order 2011 and Corporate Manslaughter and Corporate Homicide Act 2007 (Amendment) Order 2011

The Commencement Order

6. Once the custody provisions are commenced the Act will apply to deaths of persons owed a duty of care by virtue of: being detained at a custodial institution, or in a custody area at a court or police station, at a removal centre or short-term holding facility, transported in a vehicle or being held in any premises in pursuance of prison escort arrangements or immigration escort arrangements, living in secure accommodation in which the person has been placed, or if the person is a detained patient. (see section 2(2)). This means that it ought to be easier to prosecute organisations who hold people in custody, including Government Departments, for grossly negligent management failings which cause a death, without the need to identify a “directing mind” of the organisation. Where the death is not attributable to a breach of a such duty of care the organisation might still be liable under other duties contained in the Act (e.g. a duty owed to employees or as occupier of premises etc - see Section 2(1)(a) to (c)). In addition, individuals might still be liable for gross negligence manslaughter if they were personally at fault (the Act does not affect individual liability).

7. The Act will apply to all custody providers, whether public or private (i.e. contracted service providers). Liability will ultimately be determined by the courts, depending on the circumstances of the case and e.g. the terms of the contractual arrangements in place.

8. The commencement of the custody provisions will not apply retroactively so any offence committed wholly or partly before 1 September 2011 will be considered under the previous law. This will be the case if any of the conduct or events alleged to constitute the offence occurred before the commencement of the provisions.

9. It is worth noting that the custody provisions do not create additional duties of care. All custody providers already owe duties of care to detainees, to the same extent that they do to e.g. their staff or the public, by virtue of one of the other duties contained in the Act. However, once the custody provisions are commenced the specific duty of care owed to detained persons will be relevant for the purposes of the offence in the Act.
The Amendment Order

10. At the same time as the custody provisions are commenced they will be extended to cover duties of care owed to persons detained in UKBA offices for customs purposes. The custody area in a UK Border Agency office is a readily identifiable and separate secure area which contains cells, interview rooms, a custody office, detainee toilets and showers.

11. The custody provisions will also extend to duties of care owed to persons detained in Service custody premises which are the responsibility of the Ministry of Defence. These are persons subject to Service law and civilians subject to Service discipline detained in premises under the control of the Secretary of State for Defence for the keeping of persons in Service custody. This includes Service custody facilities and the Military Training and Corrective Centre in Colchester.

Territorial Extent and Application

12. Policing and criminal justice has been devolved to Northern Ireland since 2010, so the commencement of the custody provisions in Northern Ireland is a matter for the Department of Justice in Northern Ireland. The Commencement Order therefore applies only in relation to England and Wales, and Scotland. The Department of Justice is working towards commencement of the custody provisions in Northern Ireland later this year.

13. The Amendment Order on the other hand covers matters which are reserved to the UK. The amendments come into force on 1st September 2011 and will apply in Northern Ireland as soon as the custody provisions are commenced there.
<table>
<thead>
<tr>
<th>Provisions</th>
<th>Name</th>
<th>Contact details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions for England and Wales and Scotland</td>
<td>Magali Provensal</td>
<td>Criminal Law and Legal Policy Unit</td>
</tr>
<tr>
<td>or</td>
<td></td>
<td>Criminal Policy Directorate</td>
</tr>
<tr>
<td>or</td>
<td>Chiara Mac Call</td>
<td>102 Petty France</td>
</tr>
<tr>
<td></td>
<td></td>
<td>London</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SW1H 9AJ</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:Magali.Provensal@justice.gsi.gov.uk">Magali.Provensal@justice.gsi.gov.uk</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>020 3334 6075</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:Chiara.MacCall@justice.gsi.gov.uk">Chiara.MacCall@justice.gsi.gov.uk</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>020 3334 5018</td>
</tr>
<tr>
<td>Nigel Graham</td>
<td></td>
<td><a href="mailto:nigel.graham@scotland.gsi.gov.uk">nigel.graham@scotland.gsi.gov.uk</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0131 244 1843</td>
</tr>
<tr>
<td>Provisions for Northern Ireland</td>
<td>David Mercer</td>
<td><a href="mailto:David.Mercer@dojni.x.gsi.gov.uk">David.Mercer@dojni.x.gsi.gov.uk</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>028 9052 7522</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>