



Ministry of JUSTICE

Ministry of Justice Circular
19 February 2008

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

From:

National Offender Management Service – Criminal Law Policy Unit

To:

England and Wales

- Lord Chief Justice, President of Queen's Bench Division, Senior Presiding Judge, Lords of Appeal in Ordinary, Lords Justices of Appeal, High Court Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of Justices, Justices' Chief Executives, Clerks to the Justices, Judicial Studies Board, Council of Circuit Judges, Magistrates' Association, Justices' Clerks Society
- HMCS Area Directors, Crown Court Managers
- Chief Officers of Police, Association of Chief Police Officers, HM Chief Inspector of Constabulary, Chairmen of Police Authorities, Association of Police Authorities
- Chief Crown Prosecutors
- the Coroners' Society
- the Law Society, the Bar Council, the Criminal Bar Association

Scotland

- Lord Justice General, Lord Justice Clerk, Sheriffs Principal, Sheriffs Association, Director of Judicial Studies
- Chief Executive, Scottish Court Service, the Principal Clerk of Session & Justiciary
- Crown Agent; Area Procurators Fiscal
- Dean of the Faculty of Advocates; Law Society of Scotland
- Chief Constables; Association of Chief Police Officers Scotland; HM Chief Inspector of Constabulary for Scotland; Conveners of police authorities and joint police boards

For more information contact:

- corporatemanslaughterbill@homeoffice.gsi.gov.uk
- Robin Edwards (020 7035 6962, robin.edwards2@homeoffice.gsi.gov.uk)

Summary

1. The purpose of this circular is to draw your attention to arrangements for implementing the Corporate Manslaughter and Corporate Homicide Act 2007. It provides information about where to get detailed guidance; outlines how the Act applies to police forces and draws attention to a number of procedural matters.
2. 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.**
3. The Crown Prosecution Service will be providing more detailed guidance for prosecutors in England and Wales as will the Crown Office and Procurator Fiscal Service for prosecutors in Scotland. The Association of Chief Police Officers is developing further guidance on the investigation of fatalities linked to corporations and other organisations in England and Wales, as is the Association of Chief Police Officers in Scotland (ACPOS) in respect of Scotland.

Overview of the Act

4. The 2007 Act sets out a new offence for prosecuting organisations where very serious failings in the management of activities have resulted in death. The offence is called “corporate manslaughter” in England and Wales and Northern Ireland and “corporate homicide” in Scotland. In summary, an organisation is guilty of the offence if the way in which its activities are **managed or organised** causes a death and amounts 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**.
5. The offence addresses a key defect in the law that meant that, prior to the new offence, organisations could only be convicted of manslaughter (or culpable homicide in Scotland) if a “directing mind” at the top of the company (such as a director) was also personally liable. The reality of decision making in large organisations does not reflect this and the law therefore failed to provide proper accountability or justice for victims. The new offence allows an organisation’s liability to be assessed on a wider basis, providing a more effective means of accountability for very serious management failings across the organisation.
6. The offence only applies to those organisations listed in section 1(2) of the Act. These include: corporate bodies (in addition to companies, this will cover organisations incorporated under statute such as local authorities and NHS bodies); government departments; police forces and certain types of unincorporated body (notably partnerships). The latter must be employers for the offence to apply. The new offence does not apply to

individuals and nor can individuals be liable for the new offence on a secondary basis (this is expressly excluded by section 18).

7. The Act and Explanatory Notes are published by the Stationery Office and available from the website of the [Office of Public Sector Information](http://www.opsi.gov.uk/acts.htm) (www.opsi.gov.uk/acts.htm).
8. **The Ministry of Justice has prepared an introductory leaflet to the Act and a more detailed guide. These are available from the Ministry of Justice website at www.justice.gov.uk/guidance/manslaughteractguidance.htm**

Commencement

9. With 2 exceptions, all provisions in the Act will be commenced on 6 April 2008. The exceptions are:
 - **Section 2(1)(d)**. This extends the offence to duties of care relating to the management of custody. The Government is working to implement this aspect of the legislation within 3 years of the offence itself, but has indicated that a period of up to 5 years might be necessary. This does not mean that the offence will not apply to organisations responsible for the management of custody on 6 April. These organisations will be potentially liable in respect of other relevant duties of care they owe under section 2 of the Act, include duties owed to employees and as occupiers. However, duties of care relating to the care of prisoners will not engage the offence at this stage.
 - **Section 10**. This sets out a new type of sanction for the offence – a publicity order. This provision will be commenced when supporting sentencing guidelines are available for England and Wales. The Sentencing Advisory Panel published a consultation paper on publicity orders (and the assessment of financial penalties) in November 2007. A final guideline is expected to be ready by the autumn of 2008, paving the way for publicity orders to be brought into force at that point.

Application to police forces

10. The Act applies to police authorities (which are established as bodies corporate under the Police Act 1996 and the Local Government etc. (Scotland) Act 1994), and to joint police boards (bodies corporate under the Local Government Act 1973). It also applies to police forces themselves (section 1(2)(c) of the 2007 Act). The respective liabilities of each will depend on the duties of care that each owes in the law of negligence and the extent to which these are relevant duties under section 2 of the 2007 Act.

11. This circular does not deal with the type of circumstances in which police authorities and police forces will owe duties of care. However, it does consider the issue of “relevant” duties and in particular the exemption for policing and law enforcement activities in section 5 of the Act.

Relevant duties and exemptions

12. The new offence applies where the organisation concerned owed a duty of care in the law of negligence to the victim. Duties under health and safety legislation, such as the Health and Safety at Work Act etc. 1974, do not engage the offence: the duty must be one owed in the law of negligence. Health and safety duties will be relevant to determining whether an organisation is in gross breach of a duty of care but the scope of the offence is defined by the law of negligence.

13. The duty of care must also be a relevant one for the purposes of the offence. “Relevant” duties are set out in section 2 of the Act. These include:

- Duties owed to employees¹.
- Duties owed as occupier of premises.
- Duties owed when supplying goods or services, when carrying out construction or maintenance work, operating commercially or using vehicles and plant etc.
- Duties arising from holding a person in custody. This part of the offence is not, however, being commenced at this stage – see paragraph 9 above.

14. This is intended to provide broad coverage of the circumstances likely to give rise to a duty of care. Duties of care, and the activities giving rise to them, not covered by these categories are not covered by the offence. In addition, the effect of section 5 is that the offence will not apply in certain circumstances to deaths relating to operational policing.

15. Section 5 contains a full and a partial exemption. The **full exemption** is contained in section 5(1) and (2). The effect is that the offence has no application to certain activities – these are operations relating to terrorism, civil unrest and serious disorder. In these areas it will not apply to any of the “relevant” duties in section 2 of the Act.

16. A **partial exemption** is set out in section 5(3) and applies to other policing activities. The effect is that the Act does not apply to deaths relating to the

¹ Section 13 deals with the particular status of police forces and makes provision for constables to be treated as the employee of their force, for police forces to be treated as occupiers of premises and to owe other duties of care that they would owe if they were corporate bodies.

conduct of policing operations except where a duty is owed to employees (including constables) or is a duty owed as occupier of premises.

17. To illustrate this, if a police officer is chasing a suspect in a police vehicle and is killed in a crash because he has not been properly trained, the offence could apply: the duty of care here would be one owed to an employee and therefore not exempt under section 5(3).
18. Similarly, if a police vehicle is poorly maintained and as a consequence crashes whilst a suspect is chased, killing either a police officer or a member of the public, the offence might apply. Section 5(3) is not relevant here because it exempts duties of care relating to "policing or law enforcement activities". The duty of care to maintain the vehicle does not arise out of any "policing or law enforcement activity" but rather from the activity of keeping and using a vehicle.
19. However, if a police officer loses control of a vehicle whilst chasing a suspect and the ensuing crash kills a member of the public, the offence will not apply. The duty of care owed in relation to driving the vehicle will be exempt under section 5(3).
20. Broadly, therefore, the effect of section 5(3) is that the new offence will not apply to the way in which police operations are carried out, **except** in relation to police forces' responsibilities to their officers.

Proceedings

21. The offence applies to the police force itself and therefore proceedings will be brought in its name (rather than, as is the case under the Health and Safety at Work Act etc. 1974, against the office of the Chief Constable).

Procedural matters

22. The offence in section 1 is indictable only (section 1(6)). In Scotland, proceedings must be taken in the High Court of Justiciary.
23. The consent of the Director of Public Prosecutions is required for a prosecution in England and Wales. Under the Prosecution of Offences Act 1985 (section 1(7)), this consent can be given by any Crown Prosecutor.

Prosecution of partnerships

24. Section 14 makes provision for a partnership to be treated as owing whatever duties of care it would owe if it were a corporation. It also makes provision for proceedings to be brought in the name of the partnership (and not against individual partners) and for any fine to be paid out of partnership funds. This is already the case in Scotland, where partnerships have a separate legal persona.

Proceedings against Crown bodies, police forces and partnerships etc

25. Proceedings in England and Wales against Crown bodies, police forces and partnerships etc should be conducted in the same way as if the organisation concerned were a corporate body. This follows from section 15 of the Act, which applies statutory provisions relating to procedure, evidence and sentencing to these organisations in same way as they apply to corporations. Section 15 provides a power to modify or adapt these provisions: no modifications or adaptations have been identified as necessary.

Convictions for health and safety offences

26. An organisation might be charged with both an offence under the 2007 Act and under health and safety legislation in the same proceedings. In these circumstances, if an organisation is convicted of corporate manslaughter/corporate homicide, the jury may still be asked to return a verdict on the health and safety charges if the interests of justice so require (section 19).

27. This might be appropriate to reflect the full range of offending behaviour by the corporation or in circumstances where such a verdict is desirable for the purposes of any related prosecution of individuals (for example, under section 37 of the Health and safety at Work Act etc. 1974).

Sanctions

Fines

28. Attention is drawn to the consultation paper published by the Sentencing Advisory Panel in November 2007. This is available from the website of the Sentencing Guidelines Council at www.sentencing-guidelines.gov.uk/. Guidelines will apply to England and Wales only.

Remedial orders

29. Section 9 of the Act sets out a number of procedural requirements relating to the setting of remedial orders. In summary, a remedial order may only be made where the prosecution apply. An application from the prosecution must be accompanied with the proposed terms of the order. Before making the application, the prosecution must consult the appropriate regulatory authority (or authorities), such as the Health and Safety Executive, Office for Rail Regulation, Food Standards Agency or local authority.

30. The remedial order must specify a period for compliance and may require evidence of compliance to be supplied to the enforcement authority consulted by the prosecution.

Publicity orders

31. Section 10 of the Act is not being commenced at this stage (see paragraph 9 above).