

ADVICE

How much of your turnover could go

Robin Cooper, a partner at solicitors Hawkins Russell Jones, looks at corporate manslaughter and a recent consultation thereon.

NOW more than ever businesses everywhere need to ensure that health and safety procedures are up to date, reviewed on a regular basis and strictly enforced. This is because the main provisions of the Corporate Manslaughter and Corporate Homicide Act 2007 have now come into force and, as a result, companies and other organisations may now face criminal prosecution for manslaughter.

Relevant organisations will be guilty of corporate manslaughter (corporate homicide in Scotland) if the way in which their activities are managed or organised causes a person's death and amounts to a gross breach of a relevant duty of care owed to the deceased.

In addition, the role played by senior management must be a 'substantial element' in the breach of duty. Significantly, the offence does not apply to individuals, such as directors, although it will still be possible to prosecute individuals for the common law offence of gross negligence manslaughter.

Relevant duties

A relevant duty of care is one specified in the Act that is owed by an organisation under the law of negligence (subject to some exemptions), and a gross breach will involve the conduct in question falling far below what can reasonably be expected in the circumstances. Relevant duties include those owed in connection with supplying goods and services and the carrying on of any other commercial activities.

Therefore the Act has important implications for organisations that may owe common law duties of care in respect of the supply of defective products, such as manufacturers and suppliers (although remedies provided to consumers under contract or by operation of statute in these circumstances do not create relevant duties under the Act).

There has been a recent consultation by the Sentencing Advisory Panel, the body which produces advice upon sentencing guidelines. The advice issued by the panel is that the standard fine for a corporate manslaughter conviction



Robin Cooper.

ought to be five per cent of the organisation's turnover. If there are aggravating or mitigating factors, this may change the amount of the fine, but it should remain within a range of 2.5–10 per cent of turnover.

Other possible penalties are publicity orders, which are expected to be the starting point under sentencing guidelines. While there is broad discretion as to the type of publicity ordered, it is likely to involve media similar to those the company uses to promote itself.

My advice is to appoint a competent and well-trained person at a senior level who will be responsible for ensuring full compliance with all health and safety legislation, completely supported by the organisation. Then, should a death occur, the risk of the organisation being prosecuted for manslaughter will be minimised.

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■ For further information you can contact Robin at Robin.Cooper@hrjlaw.co.uk

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