

Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008, across the UK. The Act sets out a new offence for convicting an organisation where a gross failure in the way activities were managed or organised results in a person's death. Under the new approach, courts will look at management systems and practices across the organisation, providing a more effective means for prosecuting the worst corporate failures to manage health and safety (H&S) properly. The act does not change an organisations requirement to comply with H&S legislation. The new offence of corporate manslaughter allows for an organisations prosecution with unlimited fines.

1. Understanding the offence

An organisation will be guilty of the new offence if the way in which its activities are **managed or organised** causes a death and amounts to a **gross breach** of a **duty of care** to the deceased.

Penalties

An organisation guilty of the offence will be liable to an **unlimited fine**. The Act also provides for courts to impose a **publicity order**, requiring the organisation to publicise details of its conviction and fine. Courts may also require an organisation to take steps to address the failures behind the death (a **remedial order**).

Applicability

The offence applies to all companies and other corporate bodies, operating in the UK, in the private, public and third sectors. It also applies to partnerships (and to trade unions and employers' associations) if they are an employer, as well as to Government departments and police forces.

Prosecution

The offence is aimed at cases where management failures lie across an organisation and it is the organisation itself that will face prosecution.

Individuals can already be prosecuted for gross negligence manslaughter/culpable homicide and for health and safety offences. The Act does not change this and prosecutions against individuals will continue to be taken where there is sufficient evidence and it is in the public interest to do so.

2. Actions for Directors and Board Members

The action required by directors, board members and senior managers can be divided into four central points. This agenda requires **Planning, delivering, monitoring** and **reviewing** health and safety policy. The **FIA Code of Practice** offers industry tailored health and safety guidelines which should be incorporated into this four point agenda.

Planning

Health and Safety policy is a living document that evolves in response to organisational changes such as restructuring and acquisitions. It is essential that directors and board members:

- Understand the key issues.
- Decide how best to communicate, promote and champion health and safety.

This can be achieved by:

- Regularly discussing Health and Safety Issues.
- By taking leadership and creating a visible 'champion' of Health and Safety.
- Setting achievable targets.
- Getting external reviews of Health and Safety Policy.

Delivering

Organisations should aim to protect people by introducing management systems and practices that ensure risks are dealt with sensibly, responsibly and proportionately.

This can be achieved by ensuring that:

- Health and safety advice and arrangements are adequately resourced.
- There are regular risk assessments.
- Employees or their representatives are involved in decisions that affect their health and safety

In addition it is good practice to ensure the organisation has:

- Effective visible leadership and takes into account health and safety considerations when making senior management appointments.
- procurement procedures to prevent the introduction of expensive health and safety hazards
- Examined the health and safety standards of key suppliers
- Established a risk management or health and safety committee to focus on the key issues.
- Provided health and safety training to all senior managers, directors and board members.
- Supported worker involvement in health and safety, this can improve participation and highlight the companies commitment.

Monitoring

It is essential to establish an effective monitoring and reporting procedure. This should allow senior managers and directors to obtain specific and general information on the performance of health and safety policy. To achieve this it is essential that:

- Equal weight is given to reporting preventative information as well as incident data (such as accident log book).
- Regular audits should be undertaken that examine the effectiveness of the organisations health and safety policy.
- Organisations should conform to relevant industry standards, for example the **FIA Code of Practice**.

- Any changes in the organisations working or operating procedures as well as any major health and safety failure are reported as quickly as possible.
- Adequate procedures are established to implement new or changed legal requirements.

In additional organisations should implement steps such as:

- Effective monitoring of sickness and absence and workplace health.
- Collection of workplace health and safety data to allow benchmarking
- Appraisals of managers can look at their contribution to Health and Safety.
- Receive regular reports on the health and safety performance of contractors.

Reviewing

A formal review of health and safety performance is essential. It can be used to establish whether the essential health and safety principles, such as leadership, worker involvement, assessment and review have been embedded in the organisation. Any review process should:

- Examine whether the health and safety policy reflects the organisations priorities, plans and targets.
- Examine if risk management and other health and safety systems are being effectively reported.
- Report health and safety shortcomings and decide actions to address any weaknesses
- Consider immediate reviews with respect to major shortcomings.

It can additionally be appropriate to:

- Celebrate good health and safety performance and central and local levels
- Include health and safety performance in annual reports.

3. Conclusion

The Corporate Manslaughter and Corporate Homicide Act 2007 establishes the legal culpability of any organisation whose activities are **managed or organised** in such a way that they cause a death, and that this is deemed to amount to a **gross breach** of a **duty of care** to the deceased. Additionally board members, directors and employees are additionally open to prosecution by pre-existing legislation such as the Health and Safety at Work Act 1974.

It is essential that all organisations regardless of size establish an effective health and safety policy that Plans, delivers, monitors and reviews the organisation's practice.

The **FIA Code of Practice** establishes the minimum requirements for health and fitness centres and our audit procedures can certify that you meet the basic health and safety guidelines. All operators should fully implement the FIA Code of Practice along with the four point agenda of planning, delivering, monitoring and reviewing to ensure that they meet current and future legislation.