

Corporate Manslaughter Act – are you at risk?



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Finally, after 10 years the government has implemented its pledge of changing the law on 'corporate manslaughter' which becomes effective on 6th April 2008.

But, is your organisation at risk from the new Act?

There has been an increasing demand for a change in the law so that an organisation that 'plays fast and loose' with employees, customers and passengers lives is held to account. The existing offence has only been used successfully with small companies where the decision making process and the 'controlling mind' that led to a decision which resulted in a death could be clearly established.



Over the years many major accidents – Herald of Free Enterprise, Kings Cross Fire, successive rail crashes (including two that happened in Hertfordshire – Hatfield & Potters Bar) have shown that the existing law cannot guarantee the prospect of a successful prosecution. Some companies involved have received large fines, but 'corporate manslaughter' charges have not been taken to court. The new Act is intended to address that issue and has the support of the Institute of Directors and other business bodies.

The new offence – which will work alongside the existing law related to 'individual directors' – is specifically designed to target larger organisations where the 'controlling mind' cannot be clearly established. Under the new Act an organisation can be guilty of corporate man-

slaughter if death is caused by a gross breach of its duty of care that is substantially due to a senior management failure.

No new health & safety regulations are introduced, but the new Act will require directors and senior managers of all organisations to take a fresh look at their management of health & safety and fleet risks. A duty of care for 'health &



safety risks' is generally well understood, but there is a lack of clarity about an organisations duty of care

for 'fleet risks', despite official guidance published in 2003 that said the management of fleet risks i.e. the use of vehicles and drivers to support organisational activities, was firmly part of an organisations duty of care. Especially, as the number of 'work-related deaths' on the roads far exceeds those in traditional locations - construction, manufacturing etc.

The penalties under the new Act range are:

- A very large fine related to a percentage (%) of an organisations turnover
- Instructions to improve your management systems or training
- Publicity order where you will have to publish full details of the offence and what it has done to correct its failings.

As 'reputation risk' always features in the top 5 of risks that organisations worry about, these sanctions are very real.

Our approach used for over 15 years with directors and board members of a wide variety of organisations - corporate, large and small, private and public

– provides the insights that match the requirements of the new Act. Organisations need to know what is actually going on in

their business, the risks being created and the actual and potential senior management failures that could lead to:

- Significant monetary loss
- Reduced stakeholder confidence – employees; investors; suppliers
- Damaged internal and external reputation
- Death or serious injury of an employee, customer or passenger using specially developed tools we pose three questions:
- What is your risk profile and how are you creating risks – especially health & safety and fleet risks?
- Are your risk management systems effective?
- Are they a key part of normal business processes and integrated with the business?

Too often the answers show an organisation is 'not in control' and has serious ongoing management failures, which need addressing.

So, is your organisation 'failing' and therefore at risk from the new Act? 