



Ministry of  
**JUSTICE**

# A guide to the Corporate Manslaughter and Corporate Homicide Act 2007

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## Introduction

The 2007 Act puts the law on corporate manslaughter (in Scotland, corporate culpable homicide) onto a new footing, setting out a new statutory offence. 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**.

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, and 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.

The new offence is intended to complement, not replace, other forms of accountability such as prosecutions under health and safety legislation and is specifically linked to existing health and safety requirements. The offence will support well managed organisations by targeting those which cut costs by taking unjustifiable risks with people’s safety.

This guidance applies throughout the UK. However, it is non-statutory and is for guidance. It should not be regarded as providing legal advice, which should be sought if there is any doubt as to the application or interpretation of the legislation.

### Implementation

The Act was given Royal Assent on 26 July and the majority of it will come into force on 6 April 2008. The Act applies across the UK.

Provisions relating to **publicity orders** will be commenced when supporting sentencing guidelines in England and Wales are available. The Sentencing Advisory Panel expects to publish a consultation paper on publicity orders (and the assessment of financial penalties) in November. 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. The application of the offence to the management of **custody** will also commence at a later stage. The Government is working to implement that 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.

### Copies of the Act

The Act, and Explanatory Notes, are published by The Stationery Office and available from the website of the Office of Public Sector Information.

## Background

Prior to this legislation it was possible for a corporate body, such as a company, to be prosecuted for a wide range of criminal offences, including manslaughter. To be guilty of the common law offence of gross negligence manslaughter, a company had to be in gross breach of a duty of care owed to the victim. The prosecution of a company for manslaughter by gross negligence was often referred to as "corporate manslaughter". As the law stood, before a company could be convicted of manslaughter, a "directing mind" of the organisation (that is, a senior individual who could be said to embody the company in his actions and decisions) also had to be guilty of the offence. This is known as the identification principle.

In 1996 the Law Commission's report "Legislating the Criminal Code: Involuntary Manslaughter" (Law Com 237) included proposals for a new offence of corporate killing that would act as a stand-alone provision for prosecuting companies to complement offences primarily aimed at individuals. The Law Commission's report, including its proposals on corporate killing, provided the basis for the Government's subsequent consultation paper in 2000 "Reforming the Law on Involuntary Manslaughter: the Government's Proposals". These papers, and a summary of responses to the consultation paper, are available on the Home Office website

A draft Corporate Manslaughter Bill (Cm 6497) was published in March 2005. This set out the Government's proposals for legislating for reform and proposed an offence based on the Law Commission's proposals, with some modifications, including the application of the new offence to Crown bodies. The draft Bill was subject to pre-legislative scrutiny by the Home Affairs and Work and Pensions Committees in the House of Commons that autumn. Their report was published in December 2005 (HC 540 I-III) and the Government responded in March 2006 (Cm 6755).

Difficulties with prosecuting corporate bodies for gross negligence manslaughter were also relevant to Northern Ireland, where the common law was substantially the same. Policy responsibility for the criminal law lies with the Secretary of State for Northern Ireland and consultation there, following the publication of the Government's draft Bill, supported extension of the Westminster legislation.

In Scotland, although the criminal law on culpable homicide differs from the law of manslaughter elsewhere in the UK, the same issues of identifying a directing mind had arisen. Criminal law is generally a matter for the Scottish Parliament and in 2005 Scottish Ministers convened an Expert Group to review the law in Scotland on corporate liability for culpable homicide. The Group reported on 17 November 2005 and the report and other papers are available on the Scottish Executive website. After detailed consideration of the Group's proposals and the draft Bill, it was concluded that both were too closely linked to the reserved matters of health and safety and business associations to be within the Scottish Parliament's competence. The Westminster Act therefore extends to Scotland.

## Who is covered by the offence?

### Key information

The Act applies to:

- companies incorporated under companies legislation or overseas
- other corporations including:
  - public bodies incorporated by statute such as local authorities, NHS bodies and a wide range of non-departmental public bodies;
  - organisations incorporated by Royal Charter;
  - limited liability partnerships
- all other partnerships, and trade unions and employer's associations, if the organisation concerned is an employer
- Crown bodies such as Government departments
- police forces.

#### **The position of individuals**

The offence is concerned with the corporate liability of the organisation itself and does not apply to individual directors, senior managers or other individuals. Nor is it possible to convict an individual of assisting or encouraging the offence (see section 18).

However, 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.

### Questions and answers

#### **Who will be prosecuted and who will stand in the dock?**

- Prosecutions will be brought against the organisation itself and not specific individuals. As with prosecutions against companies at present, organisations will be represented by their lawyers in court, although individual directors, managers and other employees may be called as witnesses.

#### **How will it be possible in practice to prosecute an unincorporated association, such as a partnership, which has no legal personality?**

- The Act makes provision (section 14) for a prosecution to be brought in the name of a partnership and not against individual members, and for any fine to be paid out of partnership funds. This reflects the approach taken under other legislation, such as the Companies Act 2006 and means that partnerships will be dealt with in a similar manner to companies and other incorporated defendants.

- This will already be the case where a partnership is a legal person under the law by which it is governed (for example, under Scots law). Section 14 does not therefore apply to partnerships of this type, because the offence applies to these partnerships without the need for special provision.

**Why are only certain partnerships, trade unions and employers associations covered?**

- We think it is right to take a cautious approach in extending the offence to unincorporated associations: this will represent a new extension of the criminal law to these organisations. Extending the offence to partnerships will ensure that an important range of employing organisations, already subject to health and safety law, is within the offence and that large firms are not excluded because they have chosen not to incorporate.
- The Act makes provision for the range of organisations covered by the offence to be extended by secondary legislation (section 21).

**Can a parent company be convicted because of failures within a subsidiary?**

- No. Companies within a group structure are all separate legal entities and therefore subject to the offence separately. In practice, the relevant duties of care that underpin the offence are more likely to be owed by a subsidiary than a parent.

**Does the new offence apply to foreign companies?**

- Yes – the new offence applies to all companies and other corporate bodies operating in the UK, whether incorporated in the UK or abroad.
- Because of the way the new offence applies in relation to a group structure (see above), where a company incorporated abroad is operating through a locally registered subsidiary, the subsidiary is likely to be the relevant organisation to be investigated and prosecuted if appropriate.
- The Act sets out specific rules for the jurisdiction of the new offence – that is to determine whether a death in a particular place will fall under the new offence. These are explained in the section on “Jurisdiction”.

**Does the new offence apply to sub-contractors?**

- The new offence applies to all companies and employing partnerships, including those in a contracting chain. However, whether a particular contractor might be liable for the new offence will depend in the first instance on whether they owed a relevant duty of care to the victim. The Act does not impose new duties of care but the new offence will apply in respect of existing obligations on the main contractor and sub-contractors for the safety of worksites, employees and other workers which they supervise.

**Does the new offence apply to charities and voluntary organisations?**

- As with the law of manslaughter/culpable homicide at present, the new offence will apply where a charity or voluntary organisation has been incorporated (for example, as a company or as a charitable incorporated organisation under the Charities Act 2006). A charity or voluntary organisation that operates as any other form of organisation to which the offence applies, such as a partnership with employees, will also be liable to the new offence.

### **What is Crown immunity?**

- This is a long established legal doctrine that means that Crown bodies (such as Government departments) cannot be prosecuted. Section 11(1) makes it clear that this principle does not apply to prosecutions under the Act.
- Because, in law, Government departments operate in the name of the Crown, there is a need for a number of technical provisions to ensure the new offence operates in respect of Crown bodies in the same way that it operates for corporations. This is dealt with in sections 11 and 12. Whilst not Crown bodies, similar issues arise for police forces, and this is addressed by section 13.

### **Which Crown bodies will be covered by the offence?**

- Schedule 1 sets out a list of Government departments etc to which the offence applies. In addition, the offence will apply to Crown bodies that are incorporated, such as the Northern Ireland departments, Charity Commission, Office of Fair Trading and Postal Services Commission.
- The Act will also apply to a wide range of statutory public bodies which are not part of the Crown, including local authorities, NHS bodies and many non-departmental public bodies with executive responsibilities.

### **What about Executive Agencies?**

- Agencies come under the responsibility of a parent department. All departments are covered by the offence (either through Schedule 1 or by virtue of being a corporate body) and this will extend the offence to fatalities caused by Executive Agencies.

### **What happens when there are changes to government departments?**

- This is dealt with by section 16. The general rule is that any prosecution will be taken against the body that currently has responsibility for the functions connected with the death. This reflects the reality that when functions transfer, large parts of departments frequently transfer too. If appropriate, there is scope for the Secretary of State to vary which department or Crown body is to be prosecuted.
- If a function is transferred out of the public sector entirely, proceedings will be against the public body by which the function was last carried out.

## What is the scope of the new offence?

### Key information

The new offence builds on the responsibilities that employers and organisations already owe to their employees, in respect of the premises they occupy and for the activities that they carry out.

For the new offence to apply, the organisation concerned must have owed a “**relevant duty of care**” to the victim. This term is explained further below. The offence itself occurs where an organisation is in gross breach of a relevant duty because of the way its activities were managed and organised and this causes a death.

The Act sets out a number of **exemptions** covering deaths connected with certain public and government functions. The management of these functions involves wider questions of public policy and is already subject to other forms of accountability. Areas in which exemptions apply include military operations, policing, emergency response, child protection work and probation. A fuller description of the exemptions is also below.

The new offence will apply to the management of custody, but this part of the Act will not come into force on 6 April 2008. The Government is working to commence this within 3 to 5 years.

### Owing a relevant duty of care

A **duty of care** is an obligation that an organisation has to take reasonable steps to protect a person’s safety. These duties exist, for example, in respect of the systems of work and equipment used by employees, the condition of worksites and other premises occupied by an organisation and in relation to products or services supplied to customers. The Act does not create new duties – they are already owed in the civil law of negligence and the new offence is based on these.

The duty must be a **relevant** one for the offence. Relevant duties are set out in section 2 of the Act and include:

- Employer and occupier duties.
- Duties connected to:
  - Supplying goods and services
  - Commercial activities
  - Construction and maintenance work
  - Using or keeping plant, vehicles or other things.
- Duties relating to holding a person in custody.



### **Are statutory duties owed under health and safety law “relevant” duties for the new offence?**

- No – only a duty of care owed in the law of negligence will be a relevant duty of care (see section 2(1)). In practice, there is a significant overlap between these types of duty. For example, employers have a responsibility for the safety of their employees under the law of negligence and under health and safety law (see for example section 2 of the Health and Safety at Work etc Act 1974 and article 4 of the Health and Safety at Work (Northern Ireland) Order 1978). Similarly, both statutory duties and common law duties will be owed to members of the public affected by the conduct of an organisation’s activities.
- The common law offence of gross negligence manslaughter in England and Wales and Northern Ireland is based on the duty of care in the law of negligence, and this has been carried forward to the new offence. In Scotland, the concepts of negligence and duty of care are familiar from the civil law.

### **Who will decide if a duty of care is owed?**

- The Act requires the judge to decide if a duty of care is owed – section 2(5).

### **What about circumstances where a person cannot be sued in negligence?**

- In certain circumstances, a person cannot be sued under the civil law of negligence. Nevertheless, the new offence may still apply. This will be the case, for example, where a statute has replaced liability under the law of negligence with a “no fault” scheme for damages. The new offence will also apply where an organisation is engaged jointly in unlawful conduct with another person (for example, in cases of illegal employment) and where a person has voluntarily accepted the risks involved. This is set out in sections 2(4) and 2(6).

### **Exemptions**

Sections 3-7 of the Act set out specific exemptions. These mean that the offence will not apply to deaths that are connected with the management of particular activities. They fall into two broad types:

#### **Comprehensive exemptions:**

Where a comprehensive exemption exists, the new offence does not apply in respect of any relevant duty of care that an organisation owes. These apply to:

- *Public policy decisions* (section 3(1)). This covers, for example, strategic funding decisions and other matters involving competing public interests. But it does not exempt decisions about how resources were managed.
- *Military combat operations*, including potentially violent peacekeeping operations and dealing with terrorism and violent disorder. Related support and preparatory activities and hazardous training are also exempt. This is set out in section 4.
- *Police operations dealing with terrorism and violent disorder*. This also extends to support and preparatory activities and hazardous training. This is set out in sections 5(1) and 5(2).

### Partial exemptions:

In these circumstances, the new offence does not apply unless the death relates to the organisation's responsibility as employer (or to others working for the organisation) or as an occupier of premises. These include:

- *Policing and law enforcement activities*<sup>1</sup> (section 5(2)).
- *The emergency response of:*
  - fire authorities and other emergency response organisations;
  - NHS trusts (including ambulance trusts) – this does not exempt duties of care relating to medical treatment in an emergency, other than triage decisions (determining the order in which injured people are treated);
  - the Coastguard, Royal National Lifeboat Institution and other rescue bodies; the armed forces.
- Carrying out *statutory inspection work* (section 3(3)), *child-protection functions or probation activities* (section 7).
- The exercise of “exclusively public functions” (section 3(2)). This covers:
  - functions carried out by the Government using prerogative powers, such as acting in a civil emergency; and
  - functions that, **by their nature**, require statutory (or prerogative) authority. This does not exempt an activity simply because statute provides an organisation with the power to carry it out (as is the case, for example, with legislation relating to NHS bodies and local authorities). Nor does it exempt an activity because it requires a licence (such as selling alcohol). Rather, the activity must be of a sort that cannot be independently performed by a private body. The type of activity involved must intrinsically require statutory or prerogative authority, such as licensing drugs or conducting international diplomacy.

Further information can be found in the Explanatory Notes to the Act. These are published by The Stationery Office and available from the website of the Office of Public Sector Information.

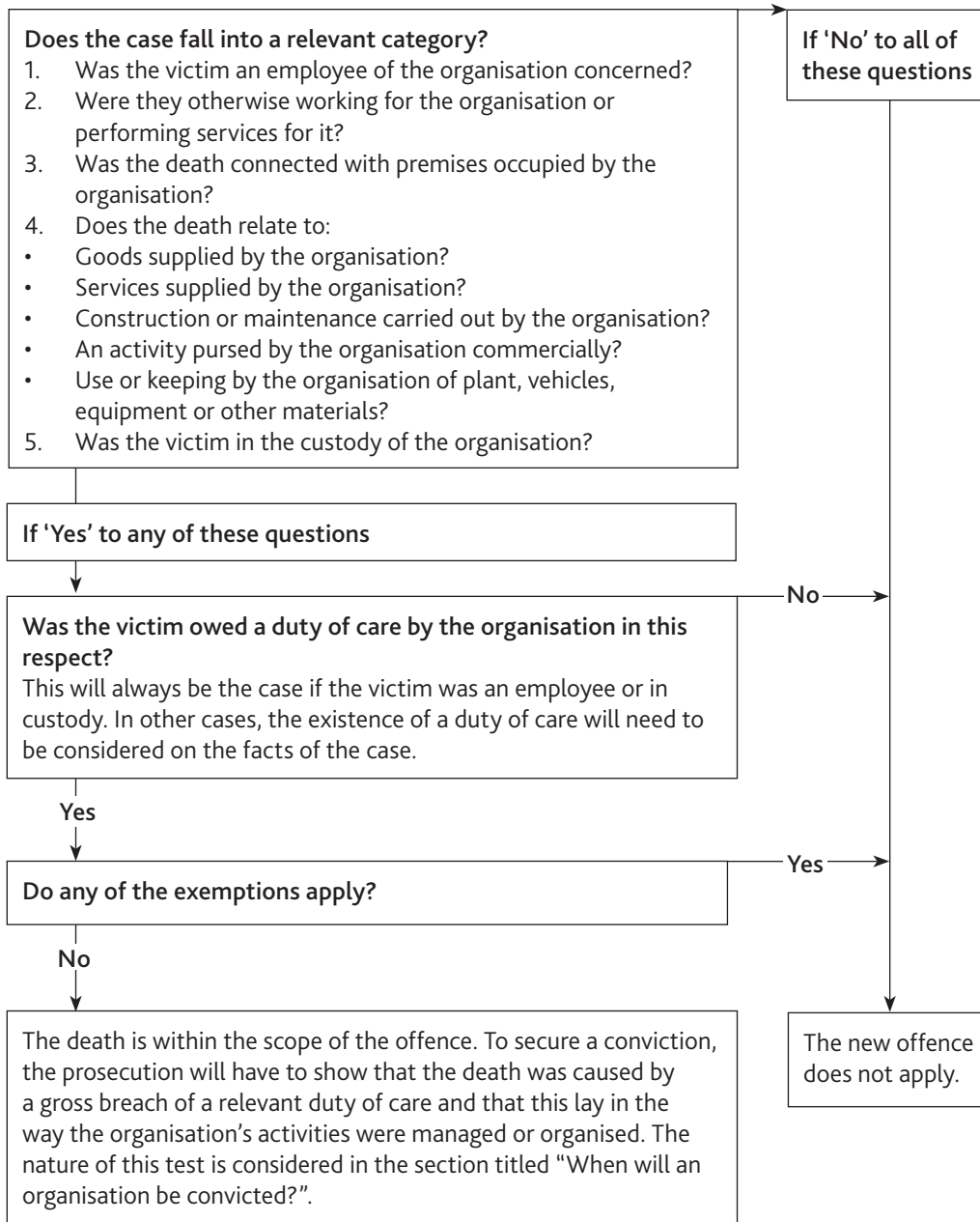
### What is the position of private companies carrying out exempt functions?

- Private companies that carry out public functions are broadly in the same position as public bodies. A number of exemptions are written in a general way, to exclude a particular activity regardless of what sort of organisation is carrying it out. In other cases, an exemption applies to all public authorities. This will include private organisations that exercise public functions. In some instances, the Act makes specific provision for organisations in both the public and private sectors. Overall, the Act is intended to ensure a broadly level playing field under the new offence for public and private sector bodies when they are in a comparable situation.

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<sup>1</sup> Where the comprehensive exemption described above does not apply.

## Working out if the new offence applies to a particular case



In some circumstances, it may be easier to consider first whether the activity which the death relates is exempt, for example, deaths involving the armed forces, policing and law enforcement, the response of the emergency services or rescue operations, child protection and probation work. This might also be a useful early consideration in cases involving significant public policy questions and types of activity requiring statutory powers.

## When will an organisation be convicted?

### Key information

Corporate manslaughter/homicide will continue to be an extremely serious offence, reserved for the very worst cases of corporate mismanagement leading to death.

The offence is concerned with **the way in which an organisation's activities were managed or organised**. Under this test, courts will look at management systems and practices across the organisation, and whether an adequate standard of care was applied to the fatal activity.

A substantial part of the failing must have occurred at a **senior management level**.

Juries will be required to consider the extent to which an organisation was in breach of health and safety requirements, and how serious those failings were. They will also be able to consider wider cultural issues within the organisation, such as attitudes or practices that tolerated health and safety breaches.

The threshold for the offence is **gross negligence**. The way in which activities were managed or organised must have fallen far below what could reasonably have been expected.

The failure to manage or organise activities properly must have **caused** the victim's death.

### Questions and answers

#### What will the courts look at under the new offence?

- The offence is concerned with the way in which activities were managed or organised. This represents a new approach to establishing corporate liability for manslaughter/culpable homicide and does not require the prosecution to establish failure on the part of particular individuals or managers. It is instead concerned with how an activity was being managed and the adequacy of those arrangements.
- This approach is not confined to a particular level of management within an organisation: the test considers how an activity was managed within the organisation as a whole. However, it will not be possible to convict an organisation unless a substantial part of the organisation's failure lay at a senior management level.
- Factors that might be considered will range from questions about the systems of work used by employees, their level of training and adequacy of equipment, to issues of immediate supervision and middle management, to questions about the organisation's strategic approach to health and safety and its arrangements for risk assessing, monitoring and auditing its processes.

- In doing so, the offence is concerned not just with formal systems for managing an activity within an organisation, but how in practice this was carried out. And in assessing whether an organisation's arrangements were adequate, section 8 of the Act specifically allows a jury to consider evidence of broader attitudes within the organisation towards safety.

#### **What standards are expected of organisations?**

- The offence does not require organisations to comply with new regulatory standards and creates an explicit link with existing requirements under health and safety law. Section 8 requires juries to consider, when assessing whether there has a gross breach of a relevant duty of care, the extent and seriousness of failures to comply with health and safety obligations, and the degree of danger this posed.
- Juries may also have regard to any relevant health and safety guidance. This includes statutory Approved Codes of Practice and other guidance published by regulatory authorities that enforce health and safety legislation. Employers do not have to follow guidance and are free to take other action. But guidance from regulatory authorities may be helpful to a jury when considering the extent of any failures to comply with health and safety legislation and whether the organisation's conduct has fallen far below what could reasonably have been expected.
- Guidance on health and safety at work in England and Wales and Scotland is available from the Health and Safety Executive and in Northern Ireland from the Health and Safety Executive Northern Ireland, as well as from local authorities as appropriate.
- However, HSE, HSENI and local authorities are not the only health and safety regulatory authorities. There are specific regulatory bodies, and in some cases separate legislation too, for certain sectors of industry (for example, in the various transport sectors: rail, marine, air and roads) and for dealing with particular safety issues (such as food and environmental safety). Further information about the standards that apply in these circumstances should be obtained from the relevant regulatory authority.

#### **Who are an organisation's senior management?**

- These are the people who make significant decisions about the organisation, or substantial parts of it. This includes both those carrying out headquarters functions (for example, central financial or strategic roles or with central responsibility for, for example, health and safety) as well as those in senior operational management roles.
- Exactly who is a member of an organisation's senior management will depend on the nature and scale of an organisation's activities. Apart from directors and similar senior management positions, roles likely to be under consideration include regional managers in national organisations and the managers of different operational divisions.

- The Act does not require the prosecution to prove specific failings on the part of individual senior managers. It will be sufficient for a jury to consider that the senior management of the organisation collectively were not taking adequate care, and this was a substantial part of the organisation's failure.

**Can the offence be avoided by senior management delegating responsibility for health and safety?**

- No. The Act is concerned with the way an activity was being managed or organised and will consider how responsibility was being discharged at different levels of the organisation. Failures by senior managers to manage health and safety adequately, including through inappropriate delegation of health and safety matters, will therefore leave organisations vulnerable to corporate manslaughter or corporate homicide charges.
- This does not mean that responsibility for managing health and safety cannot be made a matter across the management chain. However, senior management will need to ensure that they have adequate processes for health and safety and risk management in place and are implementing these.
- New **guidance** "Leading health and safety: leadership actions for directors and board members" is being drawn up jointly by the Health and Safety Commission and Institute of Directors and will be published UK-wide later this year.

**How is the threshold for the offence changing?**

- The offence will continue to apply only in cases of gross negligence. The new offence makes it clear that the standard is whether the organisation's conduct fell far below what could reasonably have been expected. This is intended to be broadly equivalent to the sort of threshold applied under the common law.

**Won't the cause of death always be a more immediate, front line matter than failure to manage properly?**

- It will not be necessary for the management failure to have been the sole cause of death. The prosecution will, however need to show that "but for" the management failure (including the substantial element attributable to senior management), the death would not have occurred. The law does not, however, recognise very remote causes, and in some circumstances the existence of an intervening event may mean that the management failure is not considered to have caused the death.

## Penalties

### Key information

An organisation convicted of the new offence can receive:

- A **fine**. There is no upper limit to what this can be.
- A **publicity order**. This requires an organisation to publicise the fact of its conviction and certain details of the offence, in a way specified by the court. Publicity orders are not being brought into force on 6 April 2008, but will be commenced when supporting guidelines are available.

In addition, the court can set a **remedial order**, requiring the organisation to address the cause of the fatal injury. These are not currently available for organisations convicted of manslaughter/culpable homicide, although they can be imposed under health and safety legislation.

### Questions and answers

#### How will courts determine the size of a fine?

- This will be a matter for the courts and any sentencing guidelines. In England and Wales, the Sentencing Guidelines Council is working on a guideline to support the new offence. The Sentencing Advisory Panel is expected to publish a consultation paper in November. A final guideline is expected to be in place by the autumn of 2008.
- Generally, we would expect the courts to consider the sort of issues taken into account when setting fines under health and safety legislation, but with the additional recognition that an organisation has been found guilty of an offence of homicide.
- Factors considered in health and safety proceedings include whether the breach was with a view to profit, the degree of risk and the extent of the danger involved, and the objective of achieving a safe environment for the public and need to bring that message home. In England and Wales, the leading case on setting fines for health and safety offences is *R v F Howe & Co (Engineers) Limited*<sup>2</sup>.
- Generally, fines need to reflect the relative size of the offender and the scale of the offending. The courts have shown an increasing willingness to hand down very severe penalties in very serious cases. As an illustration:
  - In 1999 Great Western Trains was fined **£1.5 million** in proceedings resulting from the 1997 Southall train crash.
  - In 2003 Thames Trains was fined over **£2 million** and Network Rail **£4 million** in relation to health and safety breaches that led to the fatal train crash at Ladbroke Grove in 1999.

<sup>2</sup>[1999] 2 Cr App R(S) 37

- In 2005, Transco was fined **£15 million** for health and safety breaches behind a fatal explosion in Larkhall in 1999.
- In 2006, the highest ever fines were seen against railway organisations in relation to the fatal derailment of a train near Hatfield in 2000. Network Rail was fined **£3.5 million** and, after appeal, Balfour Beatty's fine was **£7.5 million**.
- In appropriate cases, fines on this scale, and even higher, are of the sort that we would expect to see for corporate manslaughter.

#### **How will remedial orders be set?**

- 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 of Rail Regulation, Food Standards Agency or local authority.
- In practice, we expect prosecutors will wish to discuss the possibility of a remedial order with the relevant regulatory body in general liaison over the handling of the case. As the relevant enforcement experts, the regulatory body will be closely involved in drafting the proposed terms of the order, and suggesting a period in which the necessary steps must be taken.

#### **When will remedial orders be used? How will they be enforced?**

- We expect the courts to impose a remedial order in relatively rare circumstances since the relevant regulator will have been involved in the case from the outset and will have been able to use their existing enforcement powers to address any dangerous practices long before a case comes to court. Nevertheless, this power enables the judge to impose an order if it still appears necessary.
- From a practical perspective, the relevant regulator will already be closely involved in the case and will have been consulted on the terms of any remedial order. We would expect this authority to take a key interest in the progress the organisation is making to address the cause of the fatality, including taking the steps identified in the remedial order. An order may require an organisation to supply details of compliance to the regulatory body.
- An organisation that fails to take the action set out in the order can be prosecuted for failure to do so. This would be the responsibility of the general prosecuting authorities (the Crown Prosecution Service in England and Wales, the Public Prosecution Service in Northern Ireland and the Procurator Fiscal in Scotland). An unlimited fine can be imposed on conviction.

#### **When will publicity orders be made available to the courts?**

- This new sort of order will be brought into force when sentencing guidelines are available in England and Wales. The Sentencing Advisory Panel expects to publish a consultation paper on publicity orders (and the assessment of financial penalties) in November. 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.



## Jurisdiction

### Key information

- The Act applies across the UK.
- The new offence can be prosecuted if the harm resulting in death occurs:
  - in the UK
  - in the UK's territorial waters (for example, in an incident involving commercial shipping or leisure craft)
  - on a British ship, aircraft or hovercraft
  - on an oil rig or other offshore installation already covered by UK criminal law.

### Questions and answers

#### What is the "harm resulting in death"?

- Typically, this will be a physical injury that is fatal. In the majority of cases, the injury causing the death and the death will occur at the same time, in the same location. But death may occur some time after an injury or harm takes place. The courts will still have jurisdiction for the new offence if the death has occurred abroad, provided the relevant harm was sustained in the UK.
- In the case of fatalities connected with ships, aircraft and hovercraft, the new offence will still apply if the death does not actually occur on board (for example, the victim drowns), provided it relates to an on-board incident – see section 28(4).

#### Does the new Act apply to British companies responsible for deaths abroad?

- No. The new offence only applies where the harm that leads to death occurs within the UK or in one of the other places described in the box above.
- Where a death occurs abroad, the practical issues for investigators are acute – there will be no control of the crime scene or of the gathering of evidence relating to the cause of death. This evidence will be located overseas and collected and held to different standards, but would be a crucial part of the investigation and prosecution.

## Investigation and prosecution

### Key information

- It is for the police to investigate general criminal offences and investigations relating to corporate manslaughter/homicide will be led by them. However, it is important that the knowledge and expertise of the regulatory enforcing authorities (such as the Health and Safety Executive, the Office of Rail Regulation, Food Standards Agency and local authorities) are properly harnessed in any corporate manslaughter investigation, and protocols currently exist to facilitate this.
- The Rail, Air and Marine Accident Investigation Branches will continue to be responsible for separate investigations to determine the cause of an incident and to issue reports.
- Proceedings for the new offence will be the responsibility of the general prosecuting authorities: the Crown Prosecution Service in England and Wales, the Public Prosecution Service in Northern Ireland and the Procurator Fiscal in Scotland. Proceedings will not therefore be brought by regulatory bodies.

### Questions and answers

#### What arrangements exist to ensure that the relevant agencies work together?

- In England and Wales, the Work-Related Deaths Protocol, first published in 1998, has worked well to bring the police, the Crown Prosecution Service and regulatory authorities closer together when investigating and prosecuting work-related deaths.
- Work has continued since then to improve this. A revised Protocol was published in 2003, and in 2004 in response to requests from investigators, the National Liaison Committee on the Work-Related Deaths Protocol published an "Investigators' guide" to improve consistency in its application. The National Liaison Committee will continue to keep the Protocol under review. A copy of the Protocol can be obtained from the Health and Safety Executive website.
- Liaison in Northern Ireland is covered by a separate and broadly equivalent document "Investigation of Work-related Deaths: Northern Ireland agreement for liaison".
- In Scotland, a Protocol on Work-Related Deaths was published in October 2006 and has encouraged partner agencies to adopt a collaborative approach to the investigation of work-related deaths in Scotland.

#### What support will bereaved families receive?

##### England and Wales

- The Code of Practice for Victims of Crime sets out what services victims can expect to receive in England and Wales from each of the criminal justice

agencies. This will apply to corporate manslaughter investigations and prosecutions under the new Act, as it does to manslaughter cases at present.

- The Code requires a dedicated family liaison police officer to be assigned to bereaved relatives in homicide cases and provides a right to information, including notification of court cases.
- Family members are entitled to make a personal statement about how a crime has affected them, which will become part of the case papers. A pilot scheme (the Victim Advocate Scheme) operating in a number of Crown Courts allows families an opportunity to present their family impact statement orally to the court, or to have this done on their behalf. Additionally, from October this year, the Crown Prosecution Service's Victim Focus Scheme will ensure that prosecutors meet with families in cases of this nature to explain the charging decision and possibility of the prosecution reading out in court the impact statement. Family Liaison Officers will be able to provide further details about where the Victim Advocate Scheme operates and advise on the Victim Focus Scheme.
- The Health and Safety Executive does not provide a family liaison function. However, they and other regulatory bodies seek to follow the Code of Practice as far as possible when dealing with cases of work-related death that are not pursued by the police as manslaughter investigations. Further information about HSE's policy towards victims can be found on the HSE website.

#### Scotland

- In Scotland, the National Standards for Victims of Crime set out what standards victims can expect in their dealings with agencies and voluntary organisations in the criminal justice system.
- It is the duty of the relevant Procurator Fiscal to enquire into all sudden, suspicious, accidental, unexpected and unexplained deaths. The Victim Information and Advice Service, which is part of the Crown Office and Procurator Fiscal Service, provides a dedicated service that helps bereaved next of kin through the criminal justice process by keeping them informed of key developments and identifying other organisations that can offer them practical and emotional support.
- A victim statement scheme has been piloted in some parts of Scotland, giving victims of certain crimes the right to make a written statement about the emotional, physical and financial impact the crime had on them. In cases where the victim had died, this right passed to their next of kin. Information about the current availability of this scheme can be obtained from the Victim Information and Advice Service.

#### Northern Ireland

- The Police Service of Northern Ireland will assign specialist Family Liaison Officers to bereaved relatives in homicide cases. These officers will provide appropriate support and information about the investigation, and will ensure that families are treated appropriately, professionally and with respect for their needs.

- It is the current policy and practice of the Public Prosecution Service to take account of the need to ensure that all relevant information on the effects of the crime on the victim is brought to the attention of the court and this has been included as a specific requirement in their new Code for Prosecutors.
- In addition, it is normal practice, in cases involving death, for the court to seek a victim impact report, from the appropriate relative, to help inform sentencing. The Judge may also consider any correspondence provided by the next of kin or relatives of the deceased.

### **Where is further information available?**

#### **England and Wales**

- The Code of Practice and information about family impact statements, as well as further information for victims of crime, can be found on the cjsonline website. Guidance on the Victim Focus Scheme can be found on the Crown Prosecution Service website.
- Victim Support provides free and confidential support. Local Victim Support Schemes are listed in the local phone book, or the Victim Supportline can be contacted on 0845 30 30 900.

#### **Scotland**

- The National Standards for Victims of Crime as well as other useful information can be found on the Victims of Crime in Scotland website.
- The Victim Support Scotland Helpline can be contacted on 0845 60 39 123.

#### **Northern Ireland**

- Further information to assist victims of crime, particularly in explaining the roles, responsibilities and processes of those organisations working within the criminal justice system, can be found on the CJSNI website.
- Victim Support NI provides free and confidential support. Local Victim Support Offices are listed in the local telephone directory, or the Victim Supportline can be contacted on 0845 30 30 900.

### **Will compensation be available for bereaved families?**

- The families of victims will be able to seek compensation in the same way as at present. This will generally be via the civil courts, which are best placed to assess the detail of a claim for damages.

### **Can a private prosecution be brought for the new offence?**

- Individuals in England and Wales and Northern Ireland will be able to bring a private prosecution for the new offence, as is the case at present with gross negligence manslaughter. However, proceedings for the new offence must have the consent of the Director of Public Prosecutions or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland. In England and Wales, the Director's consent can be given by any Crown Prosecutor. Further information about consent should be obtained from the Crown Prosecution Service or the Public Prosecution Service for Northern Ireland.
- In Scotland, all prosecutions are initiated by the Procurator Fiscal.

**Is the reform retrospective?**

- No. It is a general principle that criminal law does not apply retrospectively. The offence will only apply to fatalities caused by gross management failings that occur after the new law comes into force on 6 April 2008. Section 27(3) makes this explicit.

**Will the existing law remain in force?**

- In England and Wales and Northern Ireland, it will no longer be possible to bring proceedings for gross negligence manslaughter against a company or other organisation to which the offence applies. That part of the common law is abolished – see section 20.
- In Scotland, where the law on culpable homicide differs in certain respects from the law on gross negligence manslaughter, the common law will continue in force. It will be for the Procurator Fiscal to determine the appropriate charge in light of the circumstances of each individual case.

**What about cases that occur before 6 April?**

- The Act includes a saving (section 27(4)) for cases that occur wholly or partly before the new offence comes into force. Prosecutions in those cases will therefore continue to be possible, even after 6 April, on the basis of the existing common law.