



# Corporate Manslaughter and Corporate Homicide Act 2007

## 2007 CHAPTER 19

### *Relevant duty of care*

#### **2 Meaning of “relevant duty of care”**

- (1) A “relevant duty of care”, in relation to an organisation, means any of the following duties owed by it under the law of negligence—
- (a) a duty owed to its employees or to other persons working for the organisation or performing services for it;
  - (b) a duty owed as occupier of premises;
  - (c) a duty owed in connection with—
    - (i) the supply by the organisation of goods or services (whether for consideration or not),
    - (ii) the carrying on by the organisation of any construction or maintenance operations,
    - (iii) the carrying on by the organisation of any other activity on a commercial basis, or
    - (iv) the use or keeping by the organisation of any plant, vehicle or other thing;
  - (d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.
- (2) A person is within this subsection if—
- (a) he is detained at a custodial institution or in a custody area at a court<sup>[F1]</sup>, a police station or customs premises];
  - <sup>[F2]</sup>(aa) he is detained in service custody premises;]
  - (b) he is detained at a removal centre or short-term holding facility;
  - (c) he is being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements;
  - (d) he is living in secure accommodation in which he has been placed;

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(e) he is a detained patient.

(3) Subsection (1) is subject to sections 3 to 7.

(4) A reference in subsection (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.

(5) For the purposes of this Act, whether a particular organisation owes a duty of care to a particular individual is a question of law.

The judge must make any findings of fact necessary to decide that question.

(6) For the purposes of this Act there is to be disregarded—

- (a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;
- (b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of his acceptance of a risk of harm.

(7) In this section—

“construction or maintenance operations” means operations of any of the following descriptions—

- (a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of—
  - (i) any building or structure,
  - (ii) anything else that forms, or is to form, part of the land, or
  - (iii) any plant, vehicle or other thing;
- (b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

“custodial institution” means a prison, a young offender institution, a secure training centre, a young offenders institution, a young offenders centre, a juvenile justice centre or a remand centre;

[<sup>F3</sup>“customs premises” means premises wholly or partly occupied by persons designated under section 3 (general customs officials) or 11 (customs revenue officials) of the Borders, Citizenship and Immigration Act 2009;]

“detained patient” means—

- (a) a person who is detained in any premises under—
  - (i) Part 2 or 3 of the Mental Health Act 1983 (c. 20) (“the 1983 Act”), or
  - (ii) Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (“the 1986 Order”);
- (b) a person who (otherwise than by reason of being detained as mentioned in paragraph (a)) is deemed to be in legal custody by—
  - (i) section 137 of the 1983 Act,
  - (ii) Article 131 of the 1986 Order, or
  - (iii) article 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078);
- (c) a person who is detained in any premises, or is otherwise in custody, under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp

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- 13) or Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or who is detained in a hospital under section 200 of that Act of 1995;
- “immigration escort arrangements” means arrangements made under section 156 of the Immigration and Asylum Act 1999 (c. 33);
- “the law of negligence” includes—
- (a) in relation to England and Wales, the Occupiers' Liability Act 1957 (c. 31), the Defective Premises Act 1972 (c. 35) and the Occupiers' Liability Act 1984 (c. 3);
  - (b) in relation to Scotland, the Occupiers' Liability (Scotland) Act 1960 (c. 30);
  - (c) in relation to Northern Ireland, the Occupiers' Liability Act (Northern Ireland) 1957 (c. 25), the Defective Premises (Northern Ireland) Order 1975 (S.I. 1975/1039 (N.I. 9)), the Occupiers' Liability (Northern Ireland) Order 1987 (S.I. 1987/1280 (N.I. 15)) and the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001 (c. 10);
- “prison escort arrangements” means arrangements made under section 80 of the Criminal Justice Act 1991 (c. 53) or under section 102 or 118 of the Criminal Justice and Public Order Act 1994 (c. 33);
- “removal centre” and “short-term holding facility” have the meaning given by section 147 of the Immigration and Asylum Act 1999;
- “secure accommodation” means accommodation, not consisting of or forming part of a custodial institution, provided for the purpose of restricting the liberty of persons under the age of 18.
- [<sup>F4</sup>“service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.]

#### Textual Amendments

- F1** Words in s. 2(2)(a) substituted (1.9.2011) by [The Corporate Manslaughter and Corporate Homicide Act 2007 \(Amendment\) Order 2011 \(S.I. 2011/1868\)](#), arts. 1, **2(2)**
- F2** S. 2(2)(aa) inserted (1.9.2011) by [The Corporate Manslaughter and Corporate Homicide Act 2007 \(Amendment\) Order 2011 \(S.I. 2011/1868\)](#), arts. 1, **2(3)**
- F3** Words in s. 2(7) inserted (1.9.2011) by [The Corporate Manslaughter and Corporate Homicide Act 2007 \(Amendment\) Order 2011 \(S.I. 2011/1868\)](#), arts. 1, **2(4)(a)**
- F4** Words in s. 2(7) inserted (1.9.2011) by [The Corporate Manslaughter and Corporate Homicide Act 2007 \(Amendment\) Order 2011 \(S.I. 2011/1868\)](#), arts. 1, **2(4)(b)**

#### Commencement Information

- I1** S. 2(1)(a)-(c) (3)-(7) in force at 6.4.2008 by [S.I. 2008/401](#), **art. 2** (with [art. 2\(3\)\(b\)](#))
- I2** S. 2(1)(d) in force at 1.9.2011 for E.W.S. by [S.I. 2011/1867](#), **art. 2**
- I3** S. 2(1)(d) in force at 3.9.2012 for N.I. by [S.R. 2012/286](#), **art. 2**

### 3 Public policy decisions, exclusively public functions and statutory inspections

- (1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a “relevant duty of care”.
- (2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a “relevant duty of care” unless it falls within section 2(1)(a), (b) or (d).

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- (3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).
- (4) In this section—
- “exclusively public function” means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred—
- (a) by the exercise of that prerogative, or
- (b) by or under a statutory provision;
- “statutory function” means a function conferred by or under a statutory provision.

#### Commencement Information

**I4** S. 3 in force at 6.4.2008 by S.I. 2008/401, art. 2 (with art. 2(3)(c))

## 4 Military activities

- (1) Any duty of care owed by the Ministry of Defence in respect of—
- (a) operations within subsection (2),
- (b) activities carried on in preparation for, or directly in support of, such operations, or
- (c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations,
- is not a “relevant duty of care”.
- (2) The operations within this subsection are operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces come under attack or face the threat of attack or violent resistance.
- (3) Any duty of care owed by the Ministry of Defence in respect of activities carried on by members of the special forces is not a “relevant duty of care”.
- (4) In this section “the special forces” means those units of the armed forces the maintenance of whose capabilities is the responsibility of the Director of Special Forces or which are for the time being subject to the operational command of that Director.

#### Commencement Information

**I5** S. 4 in force at 6.4.2008 by S.I. 2008/401, art. 2

## 5 Policing and law enforcement

- (1) Any duty of care owed by a public authority in respect of—
- (a) operations within subsection (2),

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- (b) activities carried on in preparation for, or directly in support of, such operations, or
  - (c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,
- is not a “relevant duty of care”.
- (2) Operations are within this subsection if—
    - (a) they are operations for dealing with terrorism, civil unrest or serious disorder,
    - (b) they involve the carrying on of policing or law-enforcement activities, and
    - (c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.
  - (3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a “relevant duty of care” unless it falls within section 2(1)(a), (b) or (d).
  - (4) In this section “policing or law-enforcement activities” includes—
    - (a) activities carried on in the exercise of functions that are—
      - (i) functions of police forces, or
      - (ii) functions of the same or a similar nature exercisable by public authorities other than police forces;
    - (b) activities carried on in the exercise of functions of constables employed by a public authority;
    - (c) activities carried on in the exercise of functions exercisable under Chapter 4 of Part 2 of the Serious Organised Crime and Police Act 2005 (c. 15) (protection of witnesses and other persons);
    - (d) activities carried on to enforce any provision contained in or made under the Immigration Acts.

#### **Commencement Information**

**I6** S. 5 in force at 6.4.2008 by S.I. 2008/401, art. 2 (with art. 2(3)(c))

## **6 Emergencies**

- (1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).
- (2) The organisations within this subsection are—
  - (a) a fire and rescue authority in England and Wales;
  - (b) a fire and rescue authority or joint fire and rescue board in Scotland;
  - (c) the Northern Ireland Fire and Rescue Service Board;
  - (d) any other organisation providing a service of responding to emergency circumstances either—
    - (i) in pursuance of arrangements made with an organisation within paragraph (a), (b) or (c), or

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- (ii) (if not in pursuance of such arrangements) otherwise than on a commercial basis;
  - (e) a relevant NHS body;
  - (f) an organisation providing ambulance services in pursuance of arrangements—
    - (i) made by, or at the request of, a relevant NHS body, or
    - (ii) made with the Secretary of State or with the Welsh Ministers;
  - (g) an organisation providing services for the transport of organs, blood, equipment or personnel in pursuance of arrangements of the kind mentioned in paragraph (f);
  - (h) an organisation providing a rescue service;
  - (i) the armed forces.
- (3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which—
- (a) medical treatment is carried out, or
  - (b) decisions within subsection (4) are made.
- (4) The decisions within this subsection are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment.
- (5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).
- (6) Any duty of care owed in respect of action taken—
- (a) in order to comply with a direction under Schedule 3A to the Merchant Shipping Act 1995 (c. 21) (safety directions), or
  - (b) by virtue of paragraph 4 of that Schedule (action in lieu of direction),
- is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).
- (7) In this section—
- “emergency circumstances” means circumstances that are present or imminent and—
- (a) are causing, or are likely to cause, serious harm or a worsening of such harm, or
  - (b) are likely to cause the death of a person;
- “medical treatment” includes any treatment or procedure of a medical or similar nature;
- “relevant NHS body” means—
- (za) [<sup>F5</sup>the National Health Service Commissioning Board;]
  - (a) [<sup>F6</sup>a clinical commissioning group,] a Strategic Health Authority, Primary Care Trust, NHS trust, Special Health Authority or NHS foundation trust in England;
  - (b) a Local Health Board, NHS trust or Special Health Authority in Wales;
  - (c) a Health Board or Special Health Board in Scotland, or the Common Services Agency for the Scottish Health Service;
  - (d) a Health and Social Services trust or Health and Social Services Board in Northern Ireland;

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“serious harm” means—

- (a) serious injury to or the serious illness (including mental illness) of a person;
  - (b) serious harm to the environment (including the life and health of plants and animals);
  - (c) serious harm to any building or other property.
- (8) A reference in this section to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

#### Textual Amendments

- F5** Words in s. 6(7) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 147\(a\)](#); [S.I. 2012/1831, art. 2\(2\)](#)
- F6** Words in s. 6(7) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 147\(b\)\(i\)](#); [S.I. 2012/1831, art. 2\(2\)](#)

#### Commencement Information

- I7** S. 6 in force at 6.4.2008 by [S.I. 2008/401, art. 2](#)

## 7 Child-protection and probation functions

- (1) A duty of care to which this section applies is not a “relevant duty of care” unless it falls within section 2(1)(a), (b) or (d).
- (2) This section applies to any duty of care that a local authority or other public authority owes in respect of the exercise by it of functions conferred by or under—
- (a) Parts 4 and 5 of the Children Act 1989 (c. 41),
  - (b) Part 2 of the Children (Scotland) Act 1995 (c. 36), or
  - (c) Parts 5 and 6 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (3) This section also applies to any duty of care that a local probation board [<sup>F7</sup>, a provider of probation services] or other public authority owes in respect of the exercise by it of functions conferred by or under—
- (a) Chapter 1 of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43),
  - [<sup>F8</sup>(aa) section 13 of the Offender Management Act 2007 (c. 21),]
  - (b) section 27 of the Social Work (Scotland) Act 1968 (c. 49), or
  - (c) Article 4 of the Probation Board (Northern Ireland) Order 1982 (S.I. 1982/713 (N.I. 10)).
- [<sup>F9</sup>(4) This section also applies to any duty of care that a provider of probation services owes in respect of the carrying out by it of activities in pursuance of arrangements under section 3 of the Offender Management Act 2007.]

#### Textual Amendments

- F7** Words in s. 7(3) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\), art. 1, Sch. 1 para. 25\(2\)\(a\)\(i\)](#)
- F8** S. 7(3)(aa) inserted (1.4.2008) by [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 \(S.I. 2008/912\), art. 1, Sch. 1 para. 25\(2\)\(a\)\(ii\)](#)

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**F9** S. 7(4) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), art. 1, **Sch. 1 para. 25(2)(b)**

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**Commencement Information**

**I8** S. 7 in force at 6.4.2008 by S.I. 2008/401, **art. 2** (with art. 2(3)(c))



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