

# **CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1: The offence***

14. *Section 1(1)* defines the new offence, which will be called corporate manslaughter in England and Wales and Northern Ireland and corporate homicide in Scotland. The new offence builds on key aspects of the common law offence of gross negligence manslaughter in England and Wales and Northern Ireland, described in paragraph 8 above. However, rather than being contingent on the guilt of one or more individuals, liability for the new offence depends on a finding of gross negligence in the way in which the activities of the organisation are run. In summary, the offence is committed where, in particular circumstances, an organisation owes a duty to take reasonable care for a person's safety and the way in which activities of the organisation have been managed or organised amounts to a gross breach of that duty and causes the person's death. How the activities were managed or organised by senior management must be a substantial element of the gross breach.
15. The elements of the new offence are:
  - The organisation must owe a "relevant duty of care" to the victim. The relevant duties of care are set out in section 2.
  - The organisation must be in breach of that duty of care as a result of the way in which the activities of the organisation were managed or organised. This test is not linked to a particular level of management but considers how an activity was managed within the organisation as a whole. *Section 1(3)* stipulates that an organisation cannot be convicted of the offence unless a substantial element of the breach lies in the way the senior management of the organisation managed or organised its activities.
  - The way in which the organisation's activities were managed or organised (referred to in these notes as "the management failure") must have caused the victim's death. The usual principles of causation in the criminal law will apply to determine this question. This means that the management failure need not have been the sole cause of death; it need only be a cause (although intervening acts may break the chain of causation in certain circumstances).
  - The management failure must amount to a gross breach of the duty of care. *Section 1(4)(b)* sets out the test for whether a particular breach is "gross". The test asks whether the conduct that constitutes the breach falls far below what could reasonably have been expected. This reflects the threshold for the common law offence of gross negligence manslaughter. Section 8 sets out a number of factors for the jury to take into account when considering this issue. There is no question of liability where the management of an activity includes reasonable safeguards and a death nonetheless occurs.

*These notes refer to the Corporate Manslaughter and Corporate Homicide Act 2007 (c.19) which received Royal Assent on 26 July 2007*

16. [Section 1\(2\)](#) sets out the sort of organisation to which the new offence applies. In the first place, this is corporations. These are defined as any body corporate, whether incorporated in the United Kingdom or elsewhere. This includes companies incorporated under companies legislation, as well as bodies incorporated under statute (as is the case with many non-Departmental Public Bodies and other bodies in the public sector) or by Royal Charter. However, the definition specifically excludes corporations sole, which cover a number of individual offices in England and Wales and Northern Ireland. Section 1(2) also applies the offence to partnerships, trade unions and employers' associations, if the organisation concerned is an employer. These bodies are defined in section 25. The definition of partnership extends to partnerships covered by the Partnership Act 1890 and limited partnerships registered under the Limited Partnerships Act 1907 but not to limited liability partnerships created under the Limited Liability Partnerships Act 2000, which are bodies corporate and therefore organisations to which the offence applies by virtue of section 1(2)(a). The list of organisations to which the offence applies can be further extended by secondary legislation, for example to further types of unincorporated association, subject to the affirmative resolution procedure (section 21).
17. The term "senior management" is defined in [section 1\(4\)](#) to mean those persons who play a significant role in the management of the whole or a substantial part of the organisation's activities. This covers both those in the direct chain of management as well as those in, for example, strategic or regulatory compliance roles.
18. The Act also binds the Crown and will apply to a range of Crown bodies such as government departments. Crown bodies rarely have a separate legal personality. Where they do, the application of the offence to corporations (and the Act's application to the Crown) means that the offence will also apply to these bodies. Where they do not, a mechanism is required to identify which Crown bodies are covered by the offence and this is achieved by applying the offence to a list of government departments and other bodies set out in Schedule 1. Section 22 sets out the procedure for amending the Schedule.
19. The new offence will be triable only in the Crown Court in England and Wales and Northern Ireland and the High Court of Justiciary in Scotland. These represent equivalent levels of court and involve proceedings before a jury. The sanction is an unlimited fine ([section 1\(6\)](#)), although the court will also be empowered to impose a remedial order ([section 9](#)) and a publicity order ([section 10](#)) on a convicted organisation.