

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2: Meaning of “relevant duty of care”

20. The new offence only applies in circumstances where an organisation owed a duty of care to the victim under the law of negligence. This reflects the position under the common law offence of gross negligence manslaughter and, by defining the necessary relationship between the defendant organisation and victim, sets out the broad scope of the offence. Duties of care commonly owed by corporations include the duty owed by an employer to his employees to provide a safe system of work and by an occupier of buildings and land to people in or on, or potentially affected by, the property. Duties of care also arise out of the activities that are conducted by corporations, such as the duty owed by transport companies to their passengers.
21. *Section 2(1)* requires the duty of care to be one that is owed under the law of negligence. This will commonly be a duty owed at common law, although in certain circumstances these duties have been superseded by statutory provision. For example, in the case of the duty owed by an occupier, duties are now owed under the Occupiers' Liability Acts 1957 and 1984 and the Defective Premises Act 1972 (and equivalent legislation in Northern Ireland and Scotland), although the common law continues to define by whom and to whom the duty is owed. In some circumstances, liability in the law of negligence has been superseded by statutory provision imposing strict liability, for example, the liability of carriers is governed by the Carriage of Air Act 1961. *Section 2(4)* makes provision for the offence to apply in these circumstances too. The section also, in *subsection (6)*, makes it clear that the application of the offence is not affected by common law rules precluding liability in the law of negligence where people are jointly engaged in a criminal enterprise (an aspect of the rule referred to by the Latin maxim “ex turpi causa non oritur actio”) or because a person has accepted a risk of harm (“volenti non fit injuria”).
22. *Section 2(1)* requires the duty of care to arise out of certain specific functions or activities performed by the organisation. The effect is that the offence will only apply where an organisation owes a duty of care:
 - to its **employees or to other persons working for the organisation**. This will include an employer's duty to provide a safe system of work for its employees. An organisation may also owe duties of care to those whose work it is able to control or direct, even though they are not formally employed by it. This might include contractors, secondees, or volunteers. The new offence does not impose new duties of care where these are not currently owed. But where such duties are owed, breach of them can trigger the offence.

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

- as **occupier** of premises (which is defined to include land). This covers organisations' responsibilities to ensure, for example, that buildings they occupy are kept in a safe condition.
 - when the organisation is **supplying goods or services**. This will include duties owed by organisations to their customers and will cover, for example, duties owed by transport providers to their passengers and by retailers for the safety of their products. It will also cover the supply of services by the public sector, for example, NHS bodies providing medical treatment.
 - when **constructing or maintaining buildings, infrastructure or vehicles etc or when using plant or vehicles etc**. In many circumstances, duties of care owed, for example, to ensure that adequate safety precautions are taken when repairing a road or in maintaining the safety of vehicles etc will be duties owed by an organisation in relation to the supply of a service or because it is operating commercially. But that may not be apt to cover public sector bodies in all such circumstances. These categories ensure that no lacuna is left in this respect.
 - when carrying out **other activities on a commercial basis**. This ensures that activities that are not the supply of goods and services but which are still performed by companies and others commercially, such as farming or mining, are covered by the offence.
 - that is owed **because a person is being held in detention or custody**. Section 2(2) sets out various forms of custody or detention covered by this: being detained in a prison or similar establishment, in a custody area at a court or police station or in immigration detention facilities; being held or transported under immigration or prison escort arrangements; being placed in premises used to accommodate children and young people on a secure basis; and being detained under mental health legislation. The commencement of this part of the legislation requires the further approval of Parliament (see paragraph 66 below).
23. The effect is, broadly, to include within the offence the sort of activities typically pursued by companies and other corporate bodies, whether performed by commercial organisations or by Crown or other public bodies. Many functions that are peculiarly an aspect of government are not covered by the offence because they will not fall within any of the categories of duty of care in this section. In particular, the offence will not extend to circumstances where public bodies perform activities for the benefit of the community at large but without supplying services to particular individuals. This includes wider policy-making activities on the part of central government, such as setting regulatory standards and issuing guidance to public bodies on the exercise of their functions. In many circumstances, duties of care are unlikely to be owed in respect of such activities in any event, and they will remain subject to other forms of public accountability. Sections 3 to 7 provide that the offence does not apply to the performance of specified public functions. However, whether the offence is capable of applying in any given circumstances will depend in the first place on whether a duty of care is owed to a person by an organisation, and whether the duty of care is a "relevant duty of care" by reason of section 2.
24. In criminal proceedings, questions of law are decided by the judge, whilst questions of fact, and the application of the law to the facts of the case, are generally for the jury, directed by the judge. *Section 2(5)* provides that the existence of a duty of care in a particular case is a matter of law for the judge to decide. This reflects the heavily legal nature of the tests relating to the existence of a duty of care in the law of negligence. Because the judge will be deciding whether the circumstances of the case give rise to a duty of care, he will need to make certain determinations of fact that are usually for the jury. For example, if considering whether a corporation owes a duty of care as employer, the judge will need to decide whether the victim was an employee of the corporation. The questions of fact that the judge will need to consider will generally

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

be uncontroversial and in any event will only be decided by the judge for the purposes of the duty of care question. If they otherwise affect the case, they will be for the jury to decide.