

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Policing and law enforcement

30. **Section 5** deals with policing and law enforcement activities performed by the police and other law enforcement bodies.

Subsection (1) provides an exemption that applies to the police and other law enforcement bodies in respect of all categories of duty of care referred to in section 2, i.e., including those duties of care owed by an organisation as an employer or the occupier of premises. But this wide exemption is available only in limited circumstances: specifically, operations dealing with terrorism, civil unrest or serious disorder in which an authority's officers or employees come under attack or the threat of attack; or where the authority in question is preparing for or supporting such operations; or where it is carrying on training with respect to such operations. This reflects the approach adopted in the existing law of negligence, which has already recognised that the policing of violent disorder where the police come under attack or the threat of attack will not give rise to liability on the part of an employer. The requirement in *section 5(2)* that the operations being carried on, or prepared for, or supported, amount to "policing or law enforcement activities" does not mean that only the police can benefit from this exemption: it is potentially available to bodies such as immigration authorities (*section 5(4)(d)*), and other bodies which in dealing with, say, civil disorder, are exercising functions similar to police functions. But it does mean that organisations that do not carry out policing and law enforcement activities are excluded from the scope of the exemption.

31. *Subsection (3)* confers an exemption that applies to a wider range of policing and law enforcement activities, but not in respect of the duty of care owed as employer (or occupier). The exemption therefore operates to exclude circumstances where the pursuit of law enforcement activities has resulted in a fatality to a member of the public. Many of the activities to which this will be relevant will be ones that are not in any event covered by the offence either because no duty of care is owed or because they do not amount to the supply of services or the activities are exclusively public functions. However, this might not always be the case and some areas may give rise to question. *Subsection (3)* makes it clear that policing and law enforcement activities are not, in this respect, covered by the offence. This will include decisions about and responses to emergency calls, the manner in which particular police operations are conducted, the way in which law enforcement and other coercive powers are exercised, measures taken to protect witnesses and the arrest and detention of suspects. This exemption is not confined to police forces. It extends to other bodies operating similar functions and to other law enforcement activity. For example, it would cover the activities of Her Majesty's Revenue and Customs when conducting investigations and the activities of traffic officers. It also extends to the enforcement of immigration law, and so would

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

cover circumstances where, for example, the immigration authorities are taking action to arrest, detain or deport an immigration offender.

32. As with other matters not covered by the Act, this does not exempt individuals from investigation or prosecution for individual offences, as the Act does not have a bearing on the question of individual liability.