

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

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Corporate Manslaughter and Corporate Homicide Act which received Royal Assent on 26 July 2007. They have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act makes provision for a new offence of corporate manslaughter (to be called corporate homicide in Scotland) and for this to apply to companies and other incorporated bodies, Government departments and similar bodies, police forces and certain unincorporated associations. The Act has 29 sections and 2 Schedules.
4. Section 1 defines the offence and identifies the sorts of organisation to which it will apply. The effect of sections 2 to 7 is to identify the sort of activities covered by the new offence, and to specify certain functions performed by public authorities in relation to which the offence will not apply. Section 8 outlines factors for the jury to consider when assessing an organisation's culpability. Sections 9 and 10 make provision for remedial orders and publicity orders to be made on conviction.
5. Sections 11 to 13 deal with the application of the offence to the Crown and police forces, where a number of provisions are required to reflect the particular status of Crown bodies and police forces. Section 14 makes provision to accommodate the application of the offence to partnerships. Section 15 makes further supplemental provision to ensure that rules of procedure, evidence and sentencing apply to Crown bodies, police forces and those unincorporated bodies to which the offence applies. Section 16 sets out where liability will fall following machinery of Government changes or other cases where functions are transferred.
6. Sections 17 to 20 deal with a number of ancillary matters. These require the consent of the Director of Public Prosecutions to commence proceedings in England and Wales or Northern Ireland; preclude the prosecution of individuals as secondary participants in the new offence; clarify that convictions under this Act would not preclude conviction under health and safety legislation on the same facts; and abolish the common law offence of manslaughter by gross negligence in so far as it applies to companies and other bodies that are liable to the new offence. Sections 21 to 23 provide powers to extend the offence to other types of organisation, to amend the list of Government departments and other bodies in

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Schedule 1 and to extend the forms of custody or detention that give rise to relevant duties of care. Sections 24 to 28 deal with general matters including extent and jurisdiction.

7. The Schedules to the Act set out the Government departments and other similar bodies to which the offence will apply and make a number of minor and consequential amendments.

BACKGROUND

8. 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. Crown bodies (those organisations that are legally a part of the Crown, such as Government departments) could not be prosecuted for criminal offences under the doctrine of Crown immunity. In addition, many Crown bodies, such as Government departments, do not have a separate legal identity for the purposes of a prosecution.

9. 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 (www.homeoffice.gov.uk).

10. 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).

11. Although Scots criminal law on culpable homicide differs from the law of manslaughter elsewhere in the UK, the same issues of identifying a directing mind have arisen in Scotland. In 2005 the Scottish Executive established 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 (www.scotland.gov.uk)

TERRITORIAL EXTENT

12. The Act extends to the whole of the UK. Some provisions are, by their nature, only relevant to some parts of the UK.

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13. The Act is essentially concerned with health and safety, which is not a devolved matter in Scotland.

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.

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

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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.

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

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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.
- 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.

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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 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.

Section 3: Public policy decisions, exclusively public functions and statutory inspections

25. Section 3 makes provision specifically to exclude certain matters from the ambit of the offence. *Section 3(1)* deals with decisions of public policy taken by public authorities. (Public authorities are defined by reference to the Human Rights Act 1998 and include core public bodies such as Government departments and local government bodies, as well as any other body some of whose functions are of a public nature. Courts and tribunals, which are not covered by the new offence, are excluded.) At present, the law of negligence recognises that some decisions taken by public bodies are not justiciable, in other words, are not susceptible to review in the courts. This is because they involve decisions involving competing public priorities or other questions of public policy. This might, for example, include decisions by Primary Care Trusts about the funding of particular treatments. A recent example in which the courts declined to find a duty of care on this basis related to whether the Department of Health owed a duty of care to issue interim advice about the safety of a particular drug. In many circumstances, these sorts of issues will not arise in respect of matters covered by the specified categories of duty within section 2. And basing the offence on the duty of care should mean that the offence would not apply to these sorts of decision in

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any event. Section 3(1) confirms, however, that deaths alleged to have been caused by such decisions will not come within the scope of the offence.

26. *Section 3(2)* provides for an exemption in respect of intrinsically public functions. In many circumstances, functions of this nature will not be covered by the categories of duty set out in section 2 (see paragraph 22 above). However, it is possible that some such functions will amount to the supply of goods or services or be performed commercially, particularly if performed by the private sector on behalf of the State. In other circumstances, things done in the exercise of such a function will involve the use of equipment or vehicles. Section 3(2) specifically provides that an organisation will not be liable for a breach of any duty of care owed in respect of things done in the exercise of “exclusively public functions”, unless the organisation owes the duty in its capacity as an employer or as an occupier of premises. This test is not confined to Crown or other public bodies but also excludes any organisation (public or otherwise) performing that particular type of function. This does not affect questions of individual liability, and prosecutions for gross negligence manslaughter and other offences will remain possible against individuals performing these functions who are themselves culpable. The management of these functions will continue to be subject to other forms of accountability such as independent investigations, public inquiries and the accountability of Ministers through Parliament.

27. “Exclusively public functions” are defined in *section 3(4)*. The test covers both functions falling within the prerogative of the Crown (for example, where the Government provides services in a civil emergency) and *types* of activity that by their nature require a statutory or prerogative basis, in other words, that cannot be independently performed by private bodies. This looks at the nature of the activity involved. It therefore would not cover an activity simply because it was one that required a licence or took place on a statutory basis. Rather, the *nature* of the activity involved must be one that requires a statutory or prerogative basis, for example licensing drugs or conducting international diplomacy.

28. *Section 3(3)* provides that an organisation will not be liable in respect of any duty of care owed in connection with the carrying out of statutory inspections, unless the organisation owes the duty in its capacity as an employer or as an occupier of premises. This exemption would cover regulatory activities to ensure compliance with statutory standards: for example, inspection activities by the health and safety enforcing authorities. It is unlikely that these bodies would owe duties of care in respect of such activities or that these activities would be performed commercially; nor would the exercise of these functions amount to the supply of services. It is possible, though, that the carrying out of an inspection might involve the use of equipment, so as to bring section 2(1)(c)(iv) into play. This provision makes explicit that the performance of these functions will fall outside the scope of the offence.

Section 4: Military activities

29. Section 4 makes provision to exclude certain activities performed by the armed forces. A wide range of operational military activities will be exclusively public functions within the terms of section 3(2) and so exempt from the offence. However, that exemption does not relate to an organisation’s duties as employer or occupier. Section 4 provides that certain military activities are exempt in respect of all categories of relevant duty of care. The exemption applies to the conduct, preparation and support of military operations as well as other hazardous and unpredictable circumstances, including peacekeeping operations and operations dealing with terrorism or serious public disorder. The law of negligence already

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recognises that the military authorities will rarely owe a duty of care in such circumstances. The fact that the Act will not apply in such circumstances is made explicit on the face of the Act. In addition, the exemption extends to training exercises that simulate these sorts of operations and to the activities of the special forces.

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 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.

Section 6: Emergencies

33. Section 6 clarifies that the offence does not apply to the emergency services when responding to emergencies. This does not exclude the responsibilities these authorities owe to provide a safe system of work for their employees or to secure the safety of their premises. Emergency circumstances are defined in terms of those that are life-threatening or which are causing, or threaten to cause, serious injury or illness or serious harm to the environment or buildings or other property. However, the exemption does not extend to medical treatment itself, or to decisions about this (other than decisions that establish the priority for treating patients). Matters relating to the organisation and management of medical services will therefore be within the ambit of the offence. The exemption also does not apply to duties that do not relate to *the way in which* a body responds to an emergency, for example, duties to maintain vehicles in a safe condition, which will similarly be capable of engaging the offence.

34. The effect of exemption is therefore to exclude from the offence matters such as the timeliness of a response to an emergency, the level of response and the effectiveness of the way in which the emergency is tackled. Generally, public bodies such as fire authorities and the Coastguard do not owe duties of care in this respect and therefore would not be covered by the offence in any event. In some circumstances this may however be open to question. The new offence therefore provides a consistent approach to the application of the offence to emergency services, covering organisations in respect of their responsibilities to provide safe working conditions for employees and in respect of their premises, but excluding wider issues about the adequacy of their response to emergencies.

35. The exemption extends to: fire and rescue authorities in the UK; other bodies responding to emergency circumstances by arrangement with a fire and rescue authority or on a non-commercial basis (such as organisations providing fire and rescue services at an airport under the terms of their aerodrome licence); NHS bodies and those providing ambulance services or the transport of organs or blood under contract to such a body; bodies such as the Coastguard and Royal National Lifeboat Institution; and the armed forces (who may be responding to emergency circumstances in respect of their own activities or providing assistance to civil authorities responding to an emergency). The exemption also applies to organisations carrying out rescue operations in emergency circumstances at sea, and to action taken to comply with safety directions (or taken in lieu of a direction) given by the Secretary of State under the Merchant Shipping Act 1995.

Section 7: Child-protection and probation functions

36. Section 7 provides that the offence does not apply in relation to the exercise of specific functions to protect children from harm or in relation to the activities of probation services (or equivalent bodies in Scotland and Northern Ireland). The Act does not apply in relation to the exercise (or the failure to exercise) by local authorities of a number of specific statutory functions relating to decisions made to safeguard the welfare of children. The Act also does not apply in relation to the responsibilities of probation boards (or other equivalent public authorities) to supervise offenders or provide accommodation in approved premises. It is unlikely that such bodies would owe a duty of care should a person be killed in connection with such activities (for example, if a child was not identified as being at risk and taken into care and was subsequently fatally injured). This section makes it clear that such circumstances are not covered by the offence. Local authorities and probation services will

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however be covered by the offence in respect of responsibilities to their employees and in respect of the safety of the premises they occupy.

Section 8: Factors for jury

37. Section 1(4)(b) sets out the test for assessing whether the breach of duty involved in the management failure was gross. The test asks whether the conduct that constitutes this failure falls far below what could reasonably have been expected. Whether this threshold has been met will be an issue for the jury to determine. The previous common law offence of gross negligence manslaughter asked whether the conduct was so negligent as to be criminal.

38. To provide a clearer framework for assessing an organisation's culpability, section 8 sets out a number of matters for the jury to consider. In particular, these put the management of an activity into the context of the organisation's obligations under health and safety legislation, the extent to which the organisation was in breach of these and the risk to life that is involved. Section 8 also provides for the jury to consider the wider context in which these health and safety breaches occurred, including cultural issues within the organisation such as attitudes or accepted practices that tolerated breaches. When considering breaches of health and safety duties, juries may also consider guidance on how those obligations should be discharged. Guidance does not provide an authoritative statement of required standards and therefore the jury is not required to consider the extent to which this is not complied with. However, where breaches of relevant health and safety duties are established, guidance may assist a jury in considering how serious this was.

39. These factors are not exhaustive and *section 8(4)* provides that the jury is also to take account of any other relevant matters.

Section 9: Remedial Orders

40. In addition to the power under section 1 to impose an unlimited fine, section 9 gives the courts a power to order an organisation convicted of the new offence to take steps to remedy the management failure leading to death. It also enables the court to order the organisation to remedy any consequence of the management failure, if it appeared to the court to have been a cause of death. For example, where the management failure related to inadequate risk assessment and monitoring procedures, the consequence of which was inadequate safety precautions resulting in death, the court would be able to order the convicted organisation to improve both the management of risk and the resulting safety precautions. Remedial orders may also require an organisation to address deficiencies in health and safety management that lie behind the relevant breach of duty. For example, if the breach is indicative of the organisation and employees generally paying little attention to health and safety management, an order could require the organisation to review and communicate to staff its health and safety practices.

41. Applications for remedial orders, setting out the proposed terms of the order, must be made by the prosecution, having consulted any relevant health and safety regulator. The convicted organisation will have an opportunity to make representations to the court about the order. The order must specify how long the organisation has to comply with the required steps and may require the organisation to supply evidence of compliance to any regulator consulted prior to the order being made. The compliance period can be extended on application. Failure to comply with a remedial order is an indictable-only offence for which the sanction will be an unlimited fine.

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Section 10: Power to order conviction etc to be publicised

42. Section 10 enables a court to order a convicted organisation to publicise, in a manner specified by the court, the fact of its conviction, specified particulars of the offence, the amount of any fine imposed and the terms of any remedial order that has been made. Prior to making an order the court is required to consult such regulatory bodies as it considers appropriate and to have regard to any representations made by the prosecution and defence. The order must specify the period within which the publicity must be made and may require the organisation to supply evidence of compliance to a regulator consulted prior to the order being set. Non-compliance with an order is an offence triable on indictment only and punishable with an unlimited fine.

Section 11: Application to Crown bodies

43. The general presumption is that legislation does not apply to the Crown unless this is explicitly the case. *Section 11(1)* confirms the Act's application to the Crown and provides that the immunity that generally prohibits the prosecution of the Crown does not apply for the purposes of the new offence. Taken together, this provision and section 1 mean that Crown bodies that are either bodies corporate or are listed in Schedule 1 to the Act are subject to the new offence.

44. The liability of the Crown in the law of negligence is governed by the Crown Proceedings Act 1947. This makes the Crown liable as an employer or occupier and also vicariously liable for the torts of its servants and agents. The new offence is, however, predicated on an organisation owing a personal duty of care to the victim. *Section 11(2)* bridges this difference by requiring Crown bodies to be treated as owing, for the purposes of the offence, the duties of care that they would owe if they were ordinarily constituted corporate bodies independent of the Crown.

45. *Section 11(3)* and *(4)* addresses the fact that many of the activities and functions carried out by government departments and other Crown bodies are in law performed by the Crown rather than that body. For example, civil servants in government departments are employed by the Crown rather than the department for which they work. If provision were not made to deal with this, it might mean that the new offence did not work properly in its application to Crown bodies: conduct relevant to the offence might legally be attributable to the Crown rather than the body concerned and the employer's duty of care might technically be considered to be owed by the Crown rather than by the relevant department. These provisions ensure that the activities and functions of government departments and other Crown bodies can properly be attributed to the relevant body. *Section 11(5)* ensure that the relevant parts of these provisions apply to Northern Ireland departments, which are corporate bodies and therefore, although Crown bodies, do not need to be listed in Schedule 1 for the offence to apply.

Section 12: Application to armed forces

46. Section 12 defines the term "armed forces" used in sections 4 and 6 of the Act so that it includes the Royal Navy, Army and Air Force. Section 12 also addresses the fact that technically members of the armed forces are not employed by the Ministry of Defence. Provision is required in the same way as described in paragraph 46 above to ensure that a duty of care as employer is owed to such personnel by the Ministry of Defence for the purposes of the offence.

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Section 13: Application to police forces

47. As police forces are not incorporated bodies, similar issues arise for the application of the offence to them as with Crown bodies. (This does not apply to police authorities, which are bodies corporate under the Police Act 1996 or the Police (Scotland) Act 1967 and to which the offence therefore applies separately and as for any other corporate body.) Section 13 therefore makes similar provision to section 12 and ensures that police officers are to be treated as the employees of the police force for which they work (and are therefore owed the employer's duty of care by the force); it also makes similar provision in relation to special constables and police cadets, police trainees in Northern Ireland and police officers seconded to the Serious Organised Crime Agency or National Policing Improvement Agency. It also ensures that police forces are treated as occupiers of premises and that other conduct is attributable to them as if they were distinctly constituted bodies.

Section 14: Application to partnerships

48. Partnerships (other than limited liability partnerships, which are corporate bodies and covered by the new offence as such) are not corporations and so lack a distinct legal personality for the purpose of owing a duty of care in the law of negligence. Section 14 deals with this by providing for a partnership to be treated as though it owed the same duties of care as a corporate body for the purpose of this offence. Similarly, proceedings for the new offence are to be brought in the name of the partnership and any fine imposed on it is to be paid out of the funds of the partnership.

49. These provisions are not required for partnerships that have a legal personality, as they do under (for example) Scots law. Nor are they required for trade unions or employers' associations in light of their quasi-corporate status.

Section 15: Procedure, evidence and sentencing

50. Generally, provisions relating to criminal and court procedure, and sentencing, relate to the prosecution of individuals. Many of these will also be applicable to corporate bodies. Section 15 ensures that for the purposes of the new offence all such provisions apply, in the same way as they apply to corporations, to those Government departments or other bodies listed in Schedule 1, as well as to police forces and those unincorporated associations covered by the offence.

51. Some separate provisions have been enacted to cater for the specific position of corporations. For example, section 33 of the Criminal Justice Act 1925 enables a corporation to plead through its representative as it cannot plead in person. Section 15 also enables any necessary modifications to be made to existing provisions by order. For example, a reference in the rules on criminal procedure to a director or the secretary of the corporation would need modification in order to apply to a department or police force. Such orders would be subject to the negative resolution procedure (that is, they are laid before Parliament and become law unless specifically annulled).

52. Similar provision for Scotland can be achieved under the existing powers of the High Court to regulate procedure by Act of Adjournal.

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Section 16: Transfer of functions

53. This section makes provision for cases where functions have been transferred between (or out of) Government departments or other bodies listed in Schedule 1, incorporated Crown bodies or police forces. In summary, prosecutions will be commenced, or continued, against the body that *currently* has responsibility for the relevant function. But if the function is transferred out of the public sector entirely, proceedings will be against the body by which the function was last carried out. For machinery of Government changes, the effect of this is to place responsibility for defending proceedings with the organisation within which a function currently sits. But in order to retain the Crown's overall liability for proceedings if a function is transferred to a non-Crown body (for example, if a function were privatised), liability remains with the Crown body that previously performed the function.

54. In some circumstances, a different approach might be warranted. For example, where a function transfers between Government departments but there is no corresponding transfer of personnel, it might be more appropriate for the department responsible at the time of the fatality to retain liability. Section 16 therefore includes provision for the Secretary of State to make an order specifying that liability rest with a different body. Such orders would be subject to the negative resolution procedure.

Section 17: DPP's consent required for proceedings

55. The consent of the Director of Public Prosecutions (or DPP for Northern Ireland in the case of that jurisdiction) is needed for proceedings to be instituted. In Scotland all proceedings on indictment are instigated by the Lord Advocate. There is therefore no need for a consent mechanism.

Section 18: No individual liability

56. Section 18 expressly excludes secondary liability for the new offence. Secondary liability is the principle under which a person may be prosecuted for an offence if they have assisted or encouraged its commission. In general, this means that a person can be convicted for an offence if they have aided, abetted, counselled or procured it or, in Scotland, are guilty art and part. However, section 18 specifically excludes an individual being liable for the new offence on this basis. This does not though affect an individual's direct liability for offences such as gross negligence manslaughter, culpable homicide or health and safety offences, where the relevant elements of those offences are made out.

Section 19: Convictions under this Act and under health and safety legislation

57. Section 19 clarifies that a conviction for corporate manslaughter would not preclude an organisation being convicted for a health and safety offence on the same facts if this were in the interests of justice. It would therefore also be possible to convict an individual on a secondary basis for such an offence under provisions such as section 37 of the Health and Safety at Work etc. Act 1974. This does not impose any new liabilities on individuals but ensures that existing liabilities are not reduced as an unintended consequence of the new offence.

Section 20: Abolition of liability of corporations for manslaughter at common law

58. Section 20 abolishes the application of the common law offence of gross negligence manslaughter to corporate bodies and any application it has to those unincorporated associations to which the offence applies. Prosecutions for corporate manslaughter will in

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future fall under this legislation. This section does not affect the common law offence of culpable homicide in Scotland.

Section 21: Power to extend section 1 to other organisations

59. Section 21 provides a power for the Secretary of State to apply the new offence to further categories of organisation, for example, to further types of unincorporated association. This is exercisable subject to the affirmative resolution procedure (that is, the relevant order will require approval in both Houses of Parliament before it comes into effect).

Section 22: Power to amend Schedule 1

60. This section sets out the procedure for amending Schedule 1 (the list of Government departments and similar bodies to which the offence applies). Changes that are consequential on machinery of Government changes are to be made by the negative resolution procedure. This includes changes to the name of a particular department, as well as the addition of a department (if the reason for adding it is that it will have functions all of which were previously exercisable by another organisation to which the offence applies) or deletion of a department (again, if the reason is that all of its functions are being transferred to another organisation to which the offence applies, or if the department is being abolished). Other changes to Schedule 1 are subject to the affirmative resolution procedure. The effect is that changes which alter the range of activities or functions in relation to which the new offence applies will require a resolution by Parliament before they can come into effect, but otherwise the changes will take effect unless disapproved by Parliament.

Section 23: Power to extend section 2(2)

61. Section 23 confers a power on the Secretary of State to extend the categories of person, listed in section 2(2), to whom a “relevant duty of care” is owed by reason of section 2(1)(d) – duties owed to a person because they are in custody or detention. The power enables further categories of person in custody or detention or in analogous circumstances to be added.

Section 24: Orders

62. Orders under the Act are to be made through secondary legislation. Order-making powers (sections 15, 16, 21, 22 and 23) provide whether the order is to be made under the negative or affirmative resolution procedure. Section 24 defines these procedures. The commentary on these sections above describes the implication of this for each order-making power.

Section 25: Interpretation

63. Section 25 defines various terms used in the Act including “corporation”, “employee”, “employer’s association”, “health and safety legislation”, “partnership” and “trade union”.

Section 26: Minor and consequential amendments

64. Section 26 gives effect to Schedule 2 (see below).

Section 27: Commencement and saving

65. *Section 27(1)* provides for the legislation to be brought into force by order - known as a commencement order - made by the Secretary of State. Other than in the case of section

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2(1)(d), such an order will need to be laid before Parliament but is not subject to the affirmative or negative resolution procedure. An order commencing section 2(1)(d), that is commencing the offence in respect of duties owed a person because they are in custody or detention, is subject to the affirmative resolution procedure and will require approval in both Houses of Parliament before it takes effect.

66. *Subsection (3)* makes it clear that the legislation is not retrospective. *Subsection (4)* makes provision for the common law offence of manslaughter by gross negligence to remain in place in respect of corporations for conduct and events that occur prior to commencement. Proceedings in respect of the common law offence (whether started before or after the new offence is brought into force) and arising out of the conduct and events occurring prior to commencement will not be affected by the Act.

Section 28: Extent and territorial application

67. Section 28 deals with extent and territorial application. The Act extends to the whole of the United Kingdom. (Amendments to other legislation have the same extent as the provision they are amending: *section 28(2)*.)

68. *Section 28(3)* and *(4)* set out the circumstances in which the courts will have jurisdiction for the new offence. Under section 10 of the Offences Against the Person Act 1861, courts in England and Wales have jurisdiction in a case of homicide if the injury causing death is inflicted in England and Wales, or in a place where the courts in England and Wales have jurisdiction (such as on a British ship), even if the death occurs elsewhere. The Act makes similar provision to this (but on a UK basis reflecting the application of the new offence across the UK), providing for jurisdiction if the harm causing death is sustained in the United Kingdom or other locations where criminal jurisdiction currently extends. Section 28(4) ensures that the offence will still apply if the harm resulting in death is sustained as a result of an incident involving a British ship (or aircraft or hovercraft), but the victim is not on board when he suffers that harm – for example, if a grave safety failing resulted in a ship being wrecked and the passengers being killed by drowning.

Section 29: Short title

69. The short title of the Act is the Corporate Manslaughter and Corporate Homicide Act 2007. This reflects the fact that the offence will be known as corporate manslaughter in England and Wales and Northern Ireland, and corporate homicide in Scotland.

Schedule 1: List of Government departments etc

70. The Schedule sets out the list of Government departments and other similar bodies to whom the offence applies. This does not cover Crown bodies that are incorporated (for example, such as the Health and Safety Commission and Executive) to which the offence applies by virtue of sections 1(2)(a) and 11(1) without further provision.

Schedule 2: Minor and consequential amendments

71. Schedule 2 updates references to homicide offences in the Coroners Act 1988 to include the new offence and ensures that the term “person” in that Act is wide enough to include organisations capable of committing the new offence but which are not incorporated bodies. The Schedule also updates legislation in England and Wales and Northern Ireland that provides for a case to be retried in certain circumstances following acquittal and for appeals by the prosecution against certain terminating rulings. Previously, those provisions

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applied to specific, listed offences, including manslaughter (whether by individuals or a corporate body). These lists need amendment to reflect that future manslaughter proceedings against corporations will be for the new offence.

COMMENCEMENT

72. The provisions of the Act will be brought into force by commencement order (see section 27(1)).

HANSARD REFERENCES

73. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons (session 2005-06)		
Introduction	20 July 2006	Vol 449 Col 489
Second Reading	10 October 2006	Vol 450 Cols 191-267
Committee	19 October 2006; 24 October 2006; 26 October 2006; 31 October 2006	Hansard Standing Committee B
House of Commons (session 2006-07)		
Introduction	16 November 2006	Vol 453 Col 144
Second Reading	16 November 2006	Vol 453 Col 144
Report and Third Reading	4 December 2006	Vol 454 Cols 39-126
Commons Consideration of Lords Amendments	16 May 2007	Vol 460 Cols 662-707
Commons Consideration of Lords Reasons for Insisting on Certain Lords Amendments and for Disagreeing to the Commons Amendments in Lieu.	5 June 2007; 28 June 2007 and 11 July 2007	Vol 461 Cols 145-161; Vol 462 Cols 491-509 and Cols 1561-1578
Commons Consideration of Lords Insistence on Certain Lords Amendments, Disagreement to Commons Amendments in Lieu and Amendments in Lieu of those Commons Amendments.	18 July 2007	Vol 463 Cols 331-350

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

House of Lords (session 2006-07)		
Introduction	5 December 2006	Vol 687 Col 1061
Second Reading	19 December 2006	Vol 687 Cols 1896-1959
Grand Committee	11 January 2007; 15 January 2007; 17 January 2007 and 18 January 2007	Vol 688 Cols GC111-GC168, GC169-GC226, GC227-GC280 and GC281-GC308
Report	5 February 2007	Vol 689 Cols 497-544 and Cols 560-592
Third Reading	28 February 2007	Vol 689 Cols 1602-1609
Lords Consideration of Commons Disagreement to Certain Lords Amendments and Commons Amendments to the Bill in Lieu.	22 May 2007	Vol 692 Col 573-591
Lords Consideration of Commons Insistence on Disagreeing to Certain Lords Amendments and Commons Amendments in Lieu.	25 June 2007; 9 July 2007; 17 July 2007	Vol 693 Cols 447-464 and Cols 1262-1276; Vol 694 Cols 135-153
Lords Consideration of Commons Insistence on Disagreeing with Certain Lords Amendments, Disagreement with Lords Amendments in Lieu and further Commons Amendments in Lieu of Certain Lords Amendments	23 July 2007	Vol 694 Cols 553-564

Royal Assent – 26 July 2007

House of Lords

Vol 694 Col 968

House of Commons

Vol 463 Col 1068

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