

# Corporate Manslaughter - radical change or false alarm?

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New corporate manslaughter legislation is now in force in the UK. **Ann Metherall** of the ICE health and safety expert panel says it could have a major consequences for civil engineering organisations and professionals.

After 10 years of debate the UK Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008.<sup>1</sup> What will be its impact on civil engineering organisations?

It will undoubtedly be easier to prosecute larger civil engineering businesses for manslaughter where there has been a death. It makes no change however to the legal liability of individual civil engineers – whether front line or management.

The grossly negligent can still be charged with manslaughter and those at a senior level whose ‘consent connivance or neglect’ caused a health and safety offence prosecuted under the Health and Safety at Work Act (HSWA).<sup>2</sup>

## Gross breach of duty

The largest UK company so far convicted of manslaughter had just over 100 employees. The reason is the previous requirement to demonstrate a senior ‘controlling mind’ who is personally guilty of gross negligence. The reality is that most fatal accidents result from a combination of different levels of fault and circumstances. The larger the organisation, the more diffuse that combination.

From 6 April the controlling mind test was therefore abolished. The new law will ask instead whether there has been a gross breach of a duty of care by the organisation and whether the organisation of activities by senior management collectively was a significant element. Effectively the offence poses the question ‘just how bad was the failure and how far up did it go?’

So, in future, all those involved in the construction supply chain, including clients, will need to justify the robustness of their organisation of safety as a whole. It will no longer be enough to prove that no one individual was grossly negligent.

## Fines likely to be costly

That has always been the case for health and safety offences but the stakes on a manslaughter offence are much higher. This is an offence deliberately designed to damage brand, reputation and finances.

From autumn 2008 onwards, the courts will be able to order a convicted civil engineering business to publish – at its own cost – details of the conviction and exactly what it got wrong. This could be in local media or a double-page spread in the Financial Times.

In addition, the current formal proposal on fines is that there should be a tariff of 2.5% to 10% of the convicted organisation's annual turnover. It has been flagged that this would hit disproportionately hard organisations in high-turnover, low-margin sectors of the construction industry. Whether that fact will cause a rethink remains to be seen.

## Potentially wide application

The key issue is therefore when and how the new law will be used. Will it be confined to the high profile televisual cases – for example crane collapses, major rail accidents and oil facility explosions and their equivalents?

Or will it also be regularly investigated in situations that are lower profile but equally tragic for those involved – such as the death of a construction worker falling from height or knocked over by a reversing lorry?

No-one yet knows. The UK government has said that the new offence should be confined to the worst cases, about 12-15 a year. However, it has drafted a law which, until its boundaries are tested, has the potential to come into play, at least in terms of investigation, in many hundreds of accidents each year.

## More individual prosecutions

Investigations into accidents may also have a further consequence for senior managers and directors as their actions are examined. As such we may also see more prosecutions of individual civil engineers under HSWA.

Much will therefore turn on the attitude of the police and Crown Prosecution Service to the new legislation's investigation and use. The first cases to be brought will be very revealing.

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## References

- <sup>1</sup> Corporate Manslaughter and Corporate Homicide Act 2007: Elizabeth II. Chapter 19. Her Majesty's Stationery Office, 2007,
- <sup>2</sup> Health and Safety at Work etc Act 1974: Elizabeth II. Chapter 37. Her Majesty's Stationery Office, 1974.

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