

Probation Circular



PC03/2008 – CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

IMPLEMENTATION DATE: 25 March 2008

EXPIRY DATE: March 2013

TO: Chairs of Probation Boards, Chief Officers of Probation, Secretaries of Probation Boards

CC: Board Treasurers, Improvement and Development Managers

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ATTACHED: Annex A: Understanding the Corporate Manslaughter and Corporate Homicide Act 2007
Annex B: Equality Impact Assessment

RELEVANT PREVIOUS PROBATION CIRCULARS

PC21/2007, PC25/2006

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PURPOSE

To ensure that all probation boards are aware of the Act and to clarify the implications for the National Probation Service.

ACTION

Boards to take note of the Act that will come into force on 6 April 2008 and to ensure that they comply with the relevant requirements contained therein. Compliance with the National H&S Policy and the associated guidance documents will mitigate the risks of non compliance. Boards to ensure that their local H&S Management Systems are fully compliant with the National H&S Policy.

SUMMARY

The Corporate Manslaughter and Corporate Homicide Act 2007 ("The Act") is intended to bring greater accountability for deaths resulting from the negligence of large and medium sized organisations. The Act provides for organisations to be prosecuted following deaths as a result of gross negligence. The test for prosecution will no longer require the identification of a single individual, director or senior manager. Instead, prosecution of an organisation can take place where a gross failure in the way activities were managed or organised results in a person's death.

UNCLASSIFIED

Exemptions: The Act does not apply in relation to the responsibility of Probation Boards (or other equivalent public authorities) to supervise offenders or provide accommodation in approved premises. Probation services will however be covered by the Act in respect of responsibilities to their employees and in respect of the safety of the premises they occupy.

Currently, in the case of the NPS, the responsibility for the safety of premises is shared with the Ministry of Justice, the Home Office and their appointed contractors. However, primary responsibility for the safety of employees, rests with the Probation Boards.

The management of the functions excluded from the Act will continue to be subject to other forms of accountability such as independent investigations, public inquiries and the accountability of Ministers through Parliament.

The Act does not affect existing legal duties. Individual prosecutions for gross negligence manslaughter and for H&S offences will continue.

This Act sets out a **new** offence for convicting an **organisation** where a gross failure in the way activities were managed or organised results in a person's death.

Further information can be obtained from:

www.opsi.gov.uk

www.justice.gov.uk/publications/corporatemanslaughter2007.htm



Understanding the Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 will come into force on 6 April 2008, across the UK.

The Act sets out a new offence for convicting an organisation where a gross failure in the way activities were managed or organised results in a person's death. This will apply to a wide range of organisations across the public and private sectors. In England and Wales and Northern Ireland, the new offence will be called corporate manslaughter. It will be called corporate homicide in Scotland.

Under a new approach, courts will look at management systems and practices across the organisation, providing a more effective means for prosecuting the worst corporate failures to manage health and safety properly.

Managing risks – not risk aversion

This is an opportunity for employers to think again about how risks are managed. The offence does not require organisations to comply with new regulatory standards. But organisations should ensure they are taking proper steps to meet current legal duties. From next April, the 2007 Act will mean that those who disregard the safety of others at work, with fatal consequences, are more vulnerable to very serious criminal charges.

Understanding the offence

An organisation will be guilty of the new offence if the way in which its activities are **managed or organised** causes a death and amounts to a **gross breach** of a **duty of care** to the deceased.

The new test

Juries will consider how the fatal activity was managed or organised throughout the organisation, including any systems and processes for managing safety and how these were operated in practice.

A substantial part of the failure within the organisation must have been at a **senior level**.

Senior level means the people who make significant decisions about the organisation or substantial parts of it. This includes both centralised, headquarters functions as well as those in operational management roles.

Gross breach

The organisation's conduct must have fallen far below what could have been reasonably expected.

Juries will have to take into account any health and safety breaches by the organisation – and how serious and dangerous those failures were.

Duty of care

A duty of care exists for example in respect of the systems of work and equipment used by employees, the condition of worksites and other premises occupied by an organisation and in relation to products or services supplied to customers.

The Act does not create new duties – they are already owed in the civil law of negligence and the new offence is based on these.

Penalties

An organisation guilty of the offence will be liable to an **unlimited fine**. The Act also provides for courts to impose a **publicity order**, requiring the organisation to publicise details of its conviction and fine. This will be commenced at a later date when sentencing guidelines are available (expected in autumn 2008). Courts may also require an organisation to take steps to address the failures behind the death (a **remedial order**).

Exemptions

The offence does not apply to certain public and government functions whose management involve wider questions of public policy and are already subject to other forms of accountability.

For example, it does not apply to strategic decisions about the spending of public money or military operations. Other functions, such as policing, the response of the emergency services, child protection and statutory inspection are also exempt, other than where organisations owe responsibilities to employees or for the premises they occupy.

The new offence will apply to the management of custody, but this will come into force at a later date.

DPP consent

In England and Wales and in Northern Ireland, the consent of the relevant Director of Public Prosecutions is needed before a case of corporate manslaughter can be taken to court.

Further information about this can be obtained from the Crown Prosecution Service (www.cps.gov.uk) or the Public Prosecution Service for Northern Ireland (www.ppsni.gov.uk)

In Scotland, all prosecutions are initiated by the Procurator Fiscal.

Key questions

Who is covered by the new offence?

The offence applies to all companies and other corporate bodies, operating in the UK, in the private, public and third sectors. It also applies to partnerships (and to trade unions and employers' associations) if they are an employer, as well as to Government departments and police forces.

What do organisations need to do to comply with the law?

All employers must already comply with health and safety legislation and the Act does not affect those requirements. However, the introduction of the new offence is an opportunity for employers to satisfy themselves that systems and processes for managing health and safety are adequate.

For guidance on health and safety duties and how to meet them, employers should contact the relevant regulatory authority.

Can directors, senior managers or other individuals be prosecuted for the offence?

No. The offence is aimed at cases where management failures lie across an organisation and it is the organisation itself that will face prosecution.

However, individuals can already be prosecuted for gross negligence manslaughter/ culpable homicide and for health and safety offences. The Act does not change this and prosecutions against individuals will continue to be taken where there is sufficient evidence and it is in the public interest to do so

Can the offence be avoided by senior managers delegating responsibility for health and safety?

No. Failures by senior managers to manage health and safety adequately, including through inappropriate delegation of health and safety matters, will leave organisations vulnerable to corporate manslaughter/homicide charges.

Senior managers should ensure they and their organisation are complying with current health and safety laws. New guidance "Leading health and safety at work – Leadership Actions for Directors and Board Members" is being drawn up jointly by the Institute of Directors and the Health and Safety Commission, and will be published UK-wide later this year.

What will happen in practice

Employers have a legal duty to report certain incidents at work, including work-related deaths.

The police will lead an investigation if a criminal offence (other than under health and safety law) is suspected. They will work in partnership with the HSE, local authority or other regulatory authority.

The Government expects that cases of corporate manslaughter/homicide following a death at work will be rare as the new offence is intended to cover only the worst instances of failure across an organisation to manage health and safety properly.

Cases of corporate manslaughter will be prosecuted by the Crown Prosecution Service in England Wales and Public Prosecution Service in Northern Ireland. Corporate homicide cases will be prosecuted by the Procurator Fiscal in Scotland.

Health and safety charges may be brought at the same time as a prosecution for the new offence, as well as in cases where it is not prosecuted.

Further information

The full text of the Corporate Manslaughter and Corporate Homicide Act 2007 is available on the Office of Public Sector Information website: www.opsi.gov.uk.

Further guidance on the offence, including background information, is available on the websites of the Ministry of Justice (www.justice.gov.uk) and Northern Ireland Office (www.nio.gov.uk)

Guidance on health and safety at work is available from the Health and Safety Executive (www.hse.gov.uk) and the Health and Safety Executive for Northern Ireland (www.hseni.gov.uk).

Equality Impact Assessment

Preliminary Screening

Statistics & Research

Gathering Evidence through Community Engagement

Assessment & Analysis

Action Plan

The EIA Report

EQUALITY IMPACT ASSESSMENT
NOMS
Performance & Improvement
PACU

PRELIMINARY SCREENING

Date of Screening	26 th February 2008
Name of Policy Writer	Kathryn Ball
Director General	Helen Edwards

Guidance on the Corporate Manslaughter and Corporate Homicide Act 2007	√	This is a new policy
		This is a change to an existing policy
		This is an existing policy

Policy Aims, Objectives & Projected Outcomes
This guidance aims to alert Probation Areas to the new legislation and to the critical importance of adhering to the existing National H&S Policy.

Will the policy have an impact on national or local people/staff?	Not if they are already compliant with the NPS H&S Policy
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	NO
Are there any aspects of the policy that could contribute to equality or inequality?	NO
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	NO
If this is an amendment of an existing policy, was the original policy impact assessed?	NO

If your answer to any of these questions is **YES, go on to the full EIA.**

If you have answered **NO to any particular questions**, please provide explanatory evidence.

If you have answered **NO to all of these questions** then you must also attach the following statement to all future submissions that are related to this policy and ensure it is signed off by senior management. You must also include this statement within any regulatory impact assessment that is related to this policy.

“This policy was screened for impact on equalities on [insert date]. The following evidence [Evidence] has been considered. As a result of this screening, it has been decided that a full equality impact assessment is not required. “

This guidance will not have any adverse impact however it is recognised that the revised version of the NPS H&S Policy will need to be impact assessed.