



Health and Safety Newsletter Update March 2008

Welcome to our March Newsletter Update. In this edition, we discuss:

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Health and Safety News

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.

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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.

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.

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).

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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).

HSE launches 'Shattered Lives' campaign

The HSE recently launched its 'Shattered Lives' campaign, to highlight the devastating consequences of simple slips, trips and falls – including falls from height - in the workplace.

The figures are alarming - every week, one person dies from a slip, trip or fall at work and the serious injuries from slips, trips and falls make up almost a third of all injuries reported to the HSE.

Introducing the 'Shattered Lives' campaign, Dr Elizabeth Gibby, head of the Injuries Reduction Programme, HSE said, "Each year slips, trips and falls cost the British society nearly £811 million pounds with £31 million of this coming from the catering and hospitality industry. But what these figures don't reflect is the extent to which these injuries affect individual workers and their families.

"Slips, trips and falls can be viewed as being minor, funny accidents but the effects are not. It can lead to major injuries, and a lifetime of disability or time off work and in worst cases, fatalities. 'Shattered Lives' will encourage people to change their attitudes: if you spot a hazard, don't assume 'somebody else will sort it out'.

"Slips, trips and falls can also have a shattering effect on businesses through costs such as employee absence, sick pay and reduced productivity. Irrespective of the size of the business and the job that you do, it could happen to you."

HSE's Shattered Lives campaign will offer guidance to employers and employees in the construction, building and plant maintenance and food manufacturing and retail industries where the incidence of injuries resulting from slips, trips and falls is highest.

Health and Safety Court Round Up

Stoke-on-Trent gas installer is jailed

The HSE has issued a warning to the public to only allow CORGI registered gas installers to work on their appliances. Every year approximately 25 people die from carbon monoxide poisoning caused by gas appliances and flues that have not been properly installed or maintained.

Warning comes after David Mountford, from Longton, Stoke on Trent, was sentenced to six months in prison, on each of four charges, by Newcastle under Lyme Magistrates Court on Friday 11 January 2008. The sentences will run concurrently.

Prosecution followed an investigation into numerous incidents where Mr Mountford carried out work on gas appliances whilst he did not possess CORGI registration. He pleaded guilty to four charges of breaching HSE Prohibition Notices and two charges of falsely claiming CORGI registration. The court heard that work was often carried out under different names, including David Mansfield, and using different company titles.



David Mountford pleaded guilty to:

Four breaches of Section 33(1)(g) of the Health and Safety at Work Act 1974 – failing to comply with Prohibition Notices served by HSE, which prohibited him from carrying out work in relation to gas fittings unless and until he became registered with CORGI; two breaches of Regulation 3(7) of the Gas Safety (Installation and Use) Regulations 1998 – for falsely pretending to be a member of CORGI.

Rhondda landlord prosecuted for carrying out his own gas work

The HSE has warned landlords to use only competent CORGI registered gas fitters work on domestic gas appliances. The warning follows HSE's prosecution of a Rhondda landlord after he carried out gas work at one of his properties.

Martin Griffiths of Treorchy, was fined a total of £6,000 and ordered to pay £4,478 costs after pleading guilty to breaching Regulations 3(1) and 36(4) of the Gas Safety (Installation and Use) Regulations 1998 at Llwynypia Magistrates Court on 25th January 2008.

Mr Griffiths fitted a boiler by himself at a flat he owned. His tenant noticed there was a gas leak and reported it to Transco, who made it safe.

HSE urges employers to inspect equipment regularly after Derbyshire worker loses four fingers

The HSE is warning employers that they must regularly inspect and maintain their equipment to protect their workforce. This follows HSE's prosecution of a Birmingham company after an incident which left a Derbyshire worker without four fingers and part of his palm.

Severn Trent Water Ltd, of Coventry Road, Birmingham, was fine £19,750 and ordered to pay £6,730 costs by Nottingham Magistrates Court after today pleading guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974.

On 24 May 2006, Dennis Hawksworth, 61, from Breaston, Derbyshire, was trying to unblock a machine used for removing debris from sludge at Toton Sewage Treatment Works in Nottinghamshire, when his left hand became caught in the machinery. The interlock on the machine's lid was damaged, leaving the dangerous parts in the machine unguarded. Mr Hawksworth lost four fingers and part of his palm.

HSE reminds employers of their legal duties to employees engaged in manual handling

The HSE has reminded companies of their legal duties relating to manual handling after an employee was injured when a 50kg sack of basmati rice fell on his neck.

East End Foods plc, on 22nd January 2008, pleaded guilty to failing to take reasonable care for the health and safety of employees under Section 2(1) of the Health and Safety at Work etc Act 1974. East End Foods plc was fined £25,000 with £28,000 costs.

Wolverhampton Crown Court heard that during the course of an investigation in June 2006, into an incident where an employee had been injured by a 50kg sack of rice falling onto the back of his neck, it transpired that large consignments of 50kg sacks of basmati rice were routinely being manually offloaded from containers without the use of any mechanical aids.



Access to containers and retrieval of initial sacks of rice was also being carried out by employees being raised and lowered on a pallet placed on the forks of a forklift truck. The company had not carried out a suitable and sufficient risk assessment for this activity, nor taken appropriate steps to reduce the risk to the lowest level that is reasonably practicable.

HSE had issued an Improvement Notice in December 2002 on East End Foods plc in relation to not carrying out a suitable and sufficient risk assessment for manually unloading 45kg sacks from containers, which involves risk of injury, principally back injury, from repeated lifting.

The HSE investigation into the incident highlighted ongoing activities that posed a high risk of musculoskeletal injury to employees, and that a suitable and sufficient risk assessment had not been carried out. In a typical six-month period, from January 2006 to June 2006, 1,700 tonnes of rice had been delivered that required manually offloading; therefore this was not an isolated incident. East End Foods plc had failed to heed advice given by both the HSE in 2002 and the company's own health and safety consultant in 2005.

HSE warns of the dangers of using fork lift trucks inappropriately after Carlisle firm is fined

The HSE has warned employers of the danger of using forklift trucks inappropriately. The warning follows the prosecution of a Carlisle joinery company after an employee was lifted eight feet into the air on a forklift truck to fit a company sign.

Dick Thompson and Co (Cumbria) Ltd of Blackdyke Road, Carlisle were fined £2,000 and ordered to pay £834.39 costs at Carlisle Magistrates Court after pleading guilty to a charge under section 2 (1) of the Health and Safety at Work etc Act 1974 that they failed to ensure the safety of an employee.

The court heard that on 8 August 2007 HSE inspector Mhairi Duffy visited the premises when she saw employee Ryan Jewett being lifted eight feet into the air on a pallet on a fork lift truck to fit a company sign to their own premises. The company was issued with a Prohibition Notice at the time and the prosecution has subsequently followed.

HSE warns of the dangers of working at height

The HSE has warned of the importance of implementing safe systems for working at height following the HSE prosecution of a company after an incident in which a man died.

Surjit Singh Kundi trading as Kundi Electrical, from a base in Oldbury, was (on Monday 11th February) ordered, by West Bromwich Magistrates, to pay £25,000 in fines, with £2,301 costs after pleading guilty to breaching Sections 2(1) and 3(1) of the Health & Safety at Work Act 1974. This case followed an HSE investigation into a fatal incident on 20 April 2007.

The court heard that, on that day, Mr Satnam Singh, 62, fell 5-6 metres through a fragile rooflight whilst preparing to undertake work on the roof of a textiles factory in Smethwick. Work had already been undertaken to replace plastic rooflights following a burglary at the site and further work was being undertaken by Kundi Electrical to repair recurring roof leaks.

In undertaking this roofing work, equipment and building materials were being carried across roofs, which are well known in roofing and building industries to be fragile, when Mr Singh fell through and died later in hospital from the injuries sustained.

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The roof of the textiles factory was being accessed up a ladder and across several different types of pitched roofs of several factory units and an adjacent engineering company, below which employees were working.

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