

# **Corporate Manslaughter and Corporate Homicide Act 2007**

## **New Act + Implications for 'transport'**

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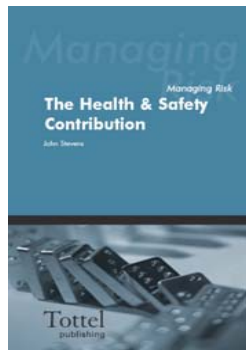
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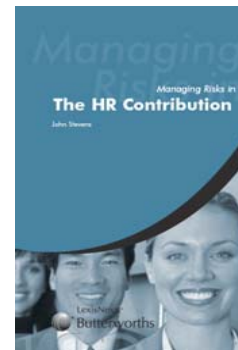
Strategic & corporate  
Consultancy  
(corporate risk assessment, risk  
management systems,  
training)

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Online & real time  
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**“Managing Risk  
– The Health &  
Safety  
Contribution”**



**“Managing Risk  
– The Human  
Resources  
Contribution”**

# Specific examples



# The new Act – Outline-1

- **The new offence**

- Guilty if activities managed or organised causes a death & amounts to a gross breach of a duty of care to deceased

- **New test**

- Juries consider how the fatal activity was managed or organised in the organisation, including systems & processes for managing safety AND actually operating in practice
- Substantial part of failure at senior level – people who make significant decisions about the whole/part of organisation. HQ & operational level

## The new Act – Outline-2

- **Gross breach**

- Conduct falls below reasonably expected
- Juries take account of H&S breaches – serious & dangerous?

- **Duty of care**

- Employees - systems of work, equipment, worksites
- Other e.g. customers – premises, products, services
- No new duties – civil law of negligence

- **Penalties**

- Unlimited fine (£ millions)
- Remedial order (Rare)
- Publicity order (later)

# The new Act – Outline-3

- **Covered**

- All companies & corporate bodies operating in UK (UK + foreign)
- Private, public, partnerships, TU's/Employers bodies, government departments & Police, charities (no Crown Immunity)
- Subsidiaries - 'stand alone'
- Main contractor & sub-contractors – duty of care owed?
- On 'British territory'

- **Exemptions**

- Public & government re 'public policy'
- Policing, emergency services, child protection – except employee responsibilities or premises
- Currently, management of custody

- **DPP consent**

- DPP consent before case is taken (includes 'private')

## The new Act – Outline-4

- **How to comply**

- 'Continue' re H&S legislation compliance
- Ensure H&S systems & processes are adequate + responsibilities structured

- **Individual offence**

- No – wide organisational & management failures
- Yes – gross negligence manslaughter/culpable homicide and H&S offences

- **Delegation**

- No - inappropriate delegation is covered
- Take account of relevant advice

# The new Act – Outline-5

- **Action**

- Employers have a legal duty to report certain incidents & work-related deaths
- Police lead investigation if a criminal offence suspected
- Partnership with HSE, local authority or other regulator
- Prosecuted by CPS etc
- Charges for H&S breach, plus individual case can be brought as well
- No offence of ‘assisting or encouraging’
- Government – cases will be rare re ‘worst instances’ (not widely accepted – re current level of deaths)

## **The new Act – Duty of Care**

- **Employer and occupier duties**
- **Duties connected to:**
  - Supplying goods and services
  - Commercial activities
  - Construction and maintenance work
  - Using or keeping plant, vehicle or other things
- **Duties relating to holding a person in custody**
- **Duty of care re law of negligence**
- **Duty under H&S law is separate, as is statutory duties and common law duties**
- **Who will decide - Judge**

# The new Act – Exemptions

- **Comprehensive**

- Public police decisions – strategic funding, but not management
- Military combat operations, plus related support & preparation and hazardous training
- Police operations dealing with terrorism etc, plus support, training

- **Partial – responsibility as employer only**

- Policing & law enforcement
- Emergency response
- Statutory inspections
- Exclusively public functions
- Private companies = ‘public work’

# The new Act – Conviction

- Only very serious cases
- Managed or organised
- Substantial failure at senior management level
- How serious is breach and ‘gross negligence’
- Failure to manage/organise = victim’s death
- No need to establish failure re individual or manager
- Factors
  - Systems of work, level of training, adequacy of equipment, supervision/middle management
  - Strategic approach to H&S, including risk assessment, monitoring and auditing
  - Dual ‘review’ – formal systems + actual practice/attitude
  - Relevant guidance e.g. legislation + ACoP’s

# The new Act - “Senior management”

- **People**

- Make significant decisions about organisation or substantial parts
- Headquarters functions e.g. central finance or strategic roles or central responsibility (H&S)
- Senior operational management roles
- Nature & scale of organisation
- Directors, similar senior management positions
- Regional managers in national organisations
- Managers of different operational divisions

- **No specific failure, but no appropriate care = substantial part of failure**

- **No inappropriate delegation**

## **Key Questions?**

- 1. Do you and your senior managers know, or ought to know if the organisation is failing?**
- 2. Are you aware, or ought to be aware, of the risk of death or serious harm?**
- 3. Do you seek to cause the organisation to ‘profit’ from the failure ?**
- 4. Do you know what you can do to reduce the possibility of ‘management failures’?**
- 5. Do you know how health & safety can be a strategic, organisational, business and commercially relevant process**
- 6. Do you know how to integrate health & safety into your organisation to add value and gain ‘competitive’ advantage?**

# What do directors need to know?

- Need to understand what is actually going on in their business – not what they think is going on
- Need to understand how their organisation is creating risks
- Need to understand their most significant potential ‘management failures’
- Need to understand at a strategic, management & operational level what they can do to manage their significant risks and potential ‘failures’
- Need to understand the ‘journey’, time scales, resources and commitment levels

# Implications for transport-1

- **Extent of 'duty of care'**
  - Employees
  - Sub-contractors
  - 'Customers'
- **Extent of 'direct & indirect' operations**
- **Review**
  - Organisational factors – business 'drivers'
  - System & processes – match business needs
  - Identify actual practices – expose reality
  - Identify actual direct & indirect costs
  - Identify and assess risks, including reputation risks
  - Identify changes required + integration
  - New structures + delegation + training

## Implications for transport-2

- **Examples - 'Own' fleet + direct operations**
  - Recruitment & selection
  - Competency & training
  - Systems, processes, SSW's
  - Vehicles & equipment specifications
  - Repair, maintenance & inspection
  - 'Hazard control' & monitoring
  - Work/travel patterns, 'working time', incentives (sleep)
  - External support & compliance (mobile 'phones)
  - Accident 'management' (causation)
  - 'Dual' message to employees, drivers? (be safe, but)

## Implications for transport-3

- **Examples – ‘Other’s’ fleet & sub-contracted**
  - Manage as if your own (no transfer of risk, duty or care)
  - Due diligence, pre-assessments/selection (agencies, supply chain)
  - Accident/incident management, ongoing monitoring
  - Agency SLA’s
  - Pre-competency assessments, insurance cover/licences,
  - Incentives & performance (dual message?)
  - General SLA’s – type of vehicles/equipment, work/travel patterns, customer inter-face

# Implications for transport-4

- **General**

- Records & monitoring (audit trail)
- Adapt practices (fit business)
- Mobile communications (in-house v filed based)
- Readily available records (working time, loads, servicing)
- Police investigation (not HSE)
- PACE interview (under caution)
- Remove potential 'evidence' (run your business?)

# RiskFrisk® Model

## Corporate risk assessment

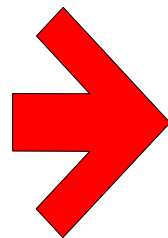
Identify how organisational aspects create downside risks

Identify if risk management system meets business needs

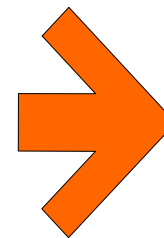
Identify how risk management can create upside opportunities

### Organisational aspects

- Context
- Factors
- Processes



Risk management system



### Processes

- Strategic
- Organisational
- People
- Business
- Commercial
- Operational

# Strategic H&S and Fleet Risk Factors

- Management system
- Communications processes
- People management
- Risk assessments
- Rules & procedures
- Learning & training
- Employee usage
- Health & hygiene control
- Emergencies
- Hazard control
- Facility & plant management
- External risks (Fleets)
- Business & workplace changes
- Procurement
- External aspects
- Accident management
- System monitoring & review

# Enterprise Factors re H&S and Fleets

## Organisational Context

- Activity
- Location (s)
- Background history
- Ownership
- Political & external influences
- Commercial status
- Business strategies

## Organisational Factors

- Organisational structure
- Core values
- Goals & objectives
- Compensation and rewards

## Organisational Processes

- Business planning
- External controls
- Management control
- Risk management

# Fleet Risk Profiler™

- 13 risk profile factors create an operational risk profile & set risk rating across the system
- 7 risk areas
  - Organisational aspects & management support
  - Vehicles & Drivers
  - Loads & Sites (depot, warehouse)
  - Journey & Delivery point
- 240 + risk elements cover all enterprise-wide fleet & related risks
- 4 Status questions
  - Risk identification & assessment
  - Policies & procedures
  - Communications & training
  - Monitoring & review
- Used for very different fleet & related operations & risk profiles



# Any questions?