

CORPORATE MANSLAUGHTER – IS YOUR H&S POLICY UP TO THE NEW LAW?

'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health and safety at work of all his employees.'

Research suggests that a large number of businesses are not prepared for the new legislation which was introduced in April 2008.

Prior to 6 April 2008, it was possible for a corporate entity, such as a company, to be prosecuted for the commonlaw offence of gross negligence manslaughter. For the company to be guilty of the offence, it was also necessary for a senior individual, who could be said to embody the company, to be guilty of the offence.

On the 6 April 2008, the Corporate Manslaughter and Corporate Homicide Act 2007 (CMA) came into force throughout the UK. The Act was introduced to provide a means of accountability for serious management failings across an organisation. The new offence works in conjunction with other forms of accountability such as gross negligent manslaughter for individuals and other health and safety legislation.

What impact will the Act have?

The Act is intended to cover only the worst instances of failure of an organisation to manage health and safety properly, and prosecutions for corporate manslaughter are expected to be rare.

Who will prosecute the offence?

If there is evidence to suggest that a serious criminal act other than a health and safety offence has been committed, the police, Crown Prosecution Service and the Health and Safety Executive, local authority or other enforcing body will liaise with each other regarding charging and prosecution of offences. This may result in prosecution by both the CPS and HSE.

Can Directors/senior managers be prosecuted as individuals?

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 be prosecuted already for gross negligence, manslaughter/culpable homicide and for health and safety offences.



Can the offence be avoided by senior management delegating responsibility for Health and Safety?

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

It will not be necessary for management failure to have been the sole cause of death. The prosecution will, need to show that 'but for' the management failure, the death would not have occurred.

The term 'management' is defined as meaning those persons who play a significant role in the management or a substantial part of the organisation's activities. This covers both those in the direct chain of management as well as those in strategic or regulatory compliance roles.

Does the new offence apply to sub-contractors?

The new offence applies to all companies and employing partnerships, including those in the contracting chain. However, whether a particular contractor might be liable under the new Act will depend initially on whether they owed a relevant duty of care to the victim.

The Act does not impose new duties of care but the new offence will apply in respect of existing obligations on the main contractor and sub-contractors for the safety of the worksites and the workers they supervise.

Can a parent company be convicted because of failures within a subsidiary organisation?

No, individual companies within a group are separate legal entities.

Senior managers have a responsibility to ensure that both they and their organisation comply with current Health and Safety legislation and that they along with relevant colleagues, are competent to manage Health and Safety issues. They must be aware of, and be in a position to, monitor projects being undertaken by the business.

If your organisation hasn't already addressed these issues it is now essential to review both the standards set in your Health and Safety policy to ensure they are achievable, and training issues and other essential steps to ensure compliance with the new Act.

RP&P Management can provide the necessary training and monitoring to help you meet the new legislation and assess the competence of contractors and consultants working on behalf of your organisation.

For further information please contact p.antill@rpp-management.co.uk, or visit www.opsi.gov.uk/acts/acts2007/ukpga

THE IMPORTANCE OF TRAINING

Over 200 people are killed and over one million injured each year in accidents in the workplace. In addition more than two million people suffer illnesses caused or made worse by work.

The financial costs to industry are significant, with an estimated 30 million working days lost to work related ill health or injury. The total cost to employers is estimated to be between £4 billion and £9 billion per year – the equivalent to 5% – 10% of all UK industrial companies' gross profits.

It is essential that you are up to date with how to identify hazards and control the risks to your employees. Training not only helps you to prevent injuries and ill health but could improve production and save money in your business by reducing days taken off for sickness. But most importantly it is a legal requirement.

£220BN COST – NOT TO TRAIN MIDDLE MANAGEMENT!

A recent survey shows that underperforming middle management is estimated to be cutting the productivity of British business by around £220 billion per year.

Almost 70% of senior managers admitted that their middle management colleagues were not appropriately trained for their positions, and around half of all middle managers thought that a lack of training was preventing them from performing effectively. The average middle manager has not participated in training for more than 17 months.

Perversley, less than a quarter of senior managers thought that training was a high priority for the business and almost two thirds of business leaders and middle managers described their company's systems of performance evaluation and feedback as inadequate.

RP&P Management believes that training of operatives and supervisory staff remains a key to changes in the accident performance of construction. The CITB five day and two day courses have set a benchmark starting point and we need to build on these courses for the benefit of the whole construction sector.

TRAINING AND COMPETENCE – DO YOU KNOW THE DIFFERENCE?

Employers often equate training with competence, but in reality, and more importantly in the eyes of the HSE, they can be two very different things.

The typical scenario is that an employee is sent on a training course connected to health and safety and is then expected to apply their newly learnt skills to a potentially onerous role within the business, often without consideration to their level of competence or experience.

In reality what should happen is that, following training, if the individual does not have the relevant experience in health and safety, they should work with someone who has, whilst undergoing regular monitoring for competence and undertaking performance reviews against an internal benchmarking scheme.

Employers who manage, install or maintain safety and critical control systems must have a formal system for managing competency, and training is a critical part of this system. Failure to comply with Health and Safety legislation, if a fatality occurs, can expose the business and its senior managers to the offence covered by the new Corporate Manslaughter Act.

Even nationally managed training can fail:

Case 1. A 90-year old man fell into an unguarded hole – the company was not prosecuted as they had done what was reasonable to ensure training had been put into effect.

Case 2. A motorcyclist ran into an unguarded and unmaintained road works sign and was killed. Maintenance was last recorded over one month previously. The company was liable as there was no system in place to monitor the actions of operatives.

Did you know!

It was no better for builders in Babylon! In Roman times if a house collapsed and killed its occupants, the builder was executed!

CONTROL OF NOISE AT WORK REGULATIONS PUT ENTERTAINMENT INDUSTRY IN THE SPOTLIGHT

The Control of Noise at Work Regulations now apply in full to the music and entertainment industries.

The key message is that exposure to live music can cause hearing damage. The regulations require employers to manage the risk to their employees by

controlling, reducing and monitoring exposure to noise.

The new measures also require designers to take the regulations into account when designing structures for the entertainment sector, and for CDM co-ordinators to ensure designers compliance with Regulation 11 CDM 2007.

For further information contact r.symonds@rpp-management.co.uk

SITE SAFE AND YOU' – A POCKET-SIZED COMPANION!

The Construction Confederation has updated the pocket-sized book 'Site Safe and You' to include the CDM 2007 regulations. The document offers information on how to create safe working conditions on sites and in workshops, and includes a checklist of information on essential issues for effective management of health and safety.

WORKING AT HEIGHT PROSECUTION BRINGS ABOUT RENEWED WARNING

Following a successful prosecution of a company director after a fatal incident in which a worker fell from height and was killed, the HSE is again warning company directors and owners of the importance of implementing safe systems.

Work at height remains one of the biggest killers of employees within the construction industry. Last year, across the UK, there were 10 employees killed, 13 self-employed people killed and 3,409 people seriously injured after falling from height.

For further information contact j.wynn@rpp-management.co.uk

SAFER FLOORS – DON'T TRIP UP!

38% of all major accidents in the workplace involve slips, trips and falls of which, according to the HSE, 50% are caused by bad housekeeping.

To help make people aware of the dangers and how to combat them, the HSE is launching a paper on Safer Floors, together with a campaign entitled 'Shattered Lives'.

The paper reviews issues such as anti-slip flooring options, the negative effects of poor lighting, potentially hazardous obstructions and the selection of appropriate footwear.

The document provides information for designers to assist them reduce risks for users and CDM co-ordinators to help them discharge their duties effectively.

For further information contact j.wynn@rpp-management.co.uk

COMPREHENSIVE GUIDE TO OCCUPATIONAL HEALTH RISK AND MANAGEMENT

A new web-based tool has been launched to provide a 'one-stop-shop' for everything that the industry needs to know on occupational health.

The website www.hse.gov.uk/construction/healthrisks/index.html is aimed at clients, designers, principal contractors and contractors, outlining how to manage health risks including asbestos, dermatitis, hand-arm vibration, musculoskeletal disorders, noise, respiratory disease and stress.

HSE Chief Inspector of Construction, Stephen Williams, said: "Properly managing occupational health is now a legal requirement and we expect to see good practice in the industry. This tool is a simple gateway into the key areas – most of the material exists in other places but this tool brings it all together."

For further information contact j.wynn@rpp-management.co.uk

The COHME model follows a three-year consultation period across HSE and with industry stakeholders. It offers a breadth of information and links to various occupational health providers including links to Constructing Better Health.

Mr Williams stressed the responsibilities of CDM duty holders which range from clients through the supply chain to sub contractors.



PLAN TO REDUCE YOUR WASTE!

New regulations introduced in April 2008 require the formal need for site waste management plans during construction work in excess of £300,000.

Offences under the new Site Waste Management Plans Regulations 2008 carry fines of up to £50,000 on summary conviction at a Magistrates' Court, and unlimited fines on indictment at Crown Court.

The enforcing authority is either the relevant Local Authority or the Environmental Agency, which also have the power to offer fixed penalty notices of £300 as an alternative punishment for certain offences.

Preparation of the plan is the client's responsibility until a Principal Contractor is appointed. DEFRA guidance recommends that clients pass the plan to the designer for initial preparation. If the plan is not in place before construction commences, both client and Principal Contractor become guilty of an offence.

The implementation of the regulations may have measurable cost implications for the client.

For further information contact r.lewis@rpp-management.co.uk

VISIT US AT SAFETY & HEALTH EXPO

Now in its 12th year, Safety & Health Expo is Europe's leading annual health and safety event with over 22,000 professionals attending in 2007.

The 2008 event will offer an extensive exhibition, live demonstration areas and a comprehensive seminar programme.

**Visit our stand – 037
at NEC 13-15 May 2008**

LATEST RIDDOR STATISTICS MAKE INTERESTING READING

The provisional fatal, major and non-fatal injuries figures for the first six months of the 2007/2008 year indicate that there were 32 worker fatalities for construction, plus two members of the public. These are statistically similar to the previous year.

For both major injuries and non-fatal injuries (major injuries + over three day injuries) construction figures went against the overall injury downward trend.

Whilst the across injury rate of major injuries for employees fell in the first two quarters of 2007 by 28%

compared with the same period the previous year, the construction rate rose by 4%.

Also whilst the overall injury rate for non-fatal injuries for employees fell by 6.5% compared to the same period the previous year, the construction rate rose by 51%.



HSE GETS TOUGH WITH DUTY HOLDERS

The HSE has issued new guidance (**Duty to Manage Asbestos Enforcement Initiative 2007/08**) for its field staff setting out a stronger line to be adopted where contraventions of the regulations are encountered.

The new document entitled "Inspection Pack for Duty to Manage Asbestos in Premises" is available on the HSE website:
<http://www.hse.gov.uk>

Reasoning for the stronger line is quoted in the publication – "In 2004, 1,969 people died from mesothelioma, virtually all of these deaths were associated with exposure to asbestos fibres."... "At around 4,000 deaths per year, asbestos related diseases are still the largest occupational killers in the UK"...

"Approximately 25% of those dying from asbestos related diseases have worked in the building, maintenance and repair trades at some time during their working lives."

Section 4 of the document states "In the work year 2007/08 HSE Senior Management are advocating a more proactive approach to enforcement of CAR 2006."...

"There is an expectation that prosecutions will be taken without waiting for the occurrence of a specific asbestos 'incident' such as contamination of the workplace."

Under appendix 1 'Risk Control Indicators' field inspectors can score duty holders and contractors. A score of 4 will indicate enforcement action while 2 or 3 indicates enforcement action may be appropriate.

This is intended as a clear warning to duty holders and contractors that asbestos regulations should be taken seriously.

For further information contact
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ASBESTOS AWARENESS CAMPAIGN

HSE is currently working with key stakeholders to raise awareness, particularly amongst tradesmen, of the risk of exposure to asbestos.

Currently, the campaign is being rolled out to building maintenance workers, electricians, plumbers, carpenters and associated trades, who can all unwittingly face the hazards of asbestos in their day-to-day work.

For further information contact r.symonds@rpp-management.co.uk

A ROUNDUP OF WHAT'S COMING IN 2008 AND BEYOND

Environmental Permitting Programme

A joint Environmental Agency, DEFRA and Welsh Assembly Government initiative intended to streamline the waste management licensing and pollution prevention control (PPC) regimes and the Environmental Permitting (England and Wales) Regulations 2007, came into force on 6 April 2008.

Duty of Care

DEFRA is considering 'Duty of Care' proposals relating to the controls on the handling, transfer and transport of waste. Following consideration to the responses of the consultation, revised legislation is programmed to come into force on 6 April 2009.

Waste Framework Directive

The European construction industry has lobbied to have two materials excluded from the proposed Directive - uncontaminated excavated soil where it is to be reused and in its natural state, and unexcavated contaminated soil. 2008 may see a conclusion to the debate and the publication of the final revised Directive.

RP&P MANAGEMENT. ALWAYS ON TARGET.

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