



**CORPORATE
MANSLAUGHTER**
What will it mean for the
Wind Energy Industry?

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Overview

- Out with the old
- In with the new
- Prevention is better than cure
- Applying the band aid

Old regime

Herald of Free Enterprise

Kings Cross Fire

Clapham Rail Disaster

Piper Alpha Disaster

Southall Rail Crash

Paddington Rail Crash

Ladbroke Grove Rail Crash

Hatfield Rail Crash

Barrow in Furness Borough Council

Essential components of the old offence

- 1. Duty of care**
- 2. Breach of duty**
- 3. Breach causes death**
- 4. Gross negligence**

Words of wisdom

R v Great Western Trains (June 1999)

“In any prosecution for manslaughter by gross negligence of a corporation it is necessary for a guilty [controlling] mind to be proved AND there must be a connection between the guilt of the individual identified, with the company”

Words of wisdom

“It is virtually impossible to bring a successful prosecution against a larger corporation, particularly where, as here, the allegation is essentially based on system failure”.

Old regime

Significant problems for the prosecution

- **Identification** of the so called “guilty or controlling mind”
- **Direct causal link** between his failure and resultant death
- **Aggregation**

End result of old law

- **No successful convictions of ‘captains of industry’**
- **Aggrieved families**

Corporate manslaughter- the new law

“An organisation” “is guilty of [corporate manslaughter] if the way in which it’s activities are managed or organised,

- a) Causes a person’s death, and
- b) Amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased”

Corporate manslaughter- the new law

But:

“An organisation is guilty of [Corporate manslaughter] only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach...”

Corporate manslaughter – the new law

Essential elements of the offence:

- **Management failure on the part of senior managers focusing on**
- **The way in which a particular activity was being managed or organised**
- **Collectively, as well as individually**

Corporate manslaughter – The new law

Organisation:

- **Corporation**
- **Schedule 1 Depts/bodies**
- **Police**
- **Partnership, trade union or employers' association that is an employer**

The new law

“Senior Management”

Those who play a role in making management decisions about, or actually managing, the activities of an organisation as a whole or a substantial part of it.

Specifically includes – management at regional level within a national organisation.

New offence compared to the old offence

Two significant differences:

- 1. No need to identify individual “controlling mind”**
- 2. Aggregation of culpability is permitted to achieve a finding of management failure**

New offence compared to the existing offence

Common ground:

- 1. Gross failure – conduct that falls far below what can reasonably be expected in the circumstances**
- 2. Causation – gross failure causes death**

New law – duties owed

- To employees, contractors and members of the public
- As occupier of premises
- As supplier of goods and services
- As provider of construction or maintenance services
- In carrying out activities on commercial basis

Duty of care- continued

Excluded duties

- **Certain military activities by MoD**
- **Public policy decisions by public authorities**
- **Certain child protection and probation functions**
- **Rescue at sea**

New law – Key points

- Corporate offence, not individual
- DPP's consent required
- Removes Crown immunity, (almost)
- Level playing field for private and public sector organisations engaged in same task
- Statutory criteria for juries

New offence- Statutory criteria

- Failure to comply with H&S law
- If so, how serious was the failure; and
- How much of a risk of death it posed
- May also consider, attitudes, systems, policies that encouraged or tolerated the failure

Resultant effect of the new offence

- **Individual directors and senior managers will not face individual prosecution in the event that the company is charged with the new offence**
- **Unlimited fine**
- **Remedial order**
- **Publicity order**

Status of new offence in the regulatory framework

“complement, not replace, other forms of redress such as prosecutions under health and safety legislation”

The regulatory framework

- Prosecution for “old style” manslaughter of a director or employee
- Prosecution of offences under existing health and safety legislation (company/individuals)
- Prosecution for corporate manslaughter

Other ramifications of the new law

- Section 37 – Health and Safety at Work etc Act 1974 (“HSWA”)
- Derivative offence
 - Consent
 - Connivance
 - Neglect

Other ramifications of the new law

- Section 7 – HSWA
- Take reasonable care for health and safety of himself and others
- To co-operate with employer and other duty holders to enable them to comply with health and safety legislation

Summary

- Fills the void in terms of prosecuting large organisations for workplace fatal accidents
- As usual, time, argument and judicial decisions will shape the law
- Senior managers will be the focus of attention
- Publicity for prosecutions will be high

Protecting your organisation from prosecution

- Ensure that health and safety is managed effectively
- Engagement and belief in the correct culture, from top to bottom
- Eradicate poor attitudes, practices, policies
- Review current approaches, benchmark performance – role of BWEA

What is required of senior managers

- **Strong and active leadership:** visible, active commitment from Board through all management levels.
- Integration of good H&S management with business decisions
- Engagement with workers
- **Assessment and review:** ID and manage risks; access competent advice; monitor and review

Conclusion

- The new offence – nothing to fear for the good
- As a piece of legislation, numerous issues to iron out
- Senior managers will be scrutinised
- There will be high profile prosecutions
- Review, plan, deliver, monitor
- Be ready for the inspector's call

The Message

The Corporate Manslaughter and Corporate Homicide Act 2007 should present no significant concern to responsible organisations that demonstrate strong, high level leadership for health and safety, and have an effective health and safety management system

Questions?

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