

Corporate Manslaughter and Corporate Homicide Act 2007

New Act + Implications for 'transport'

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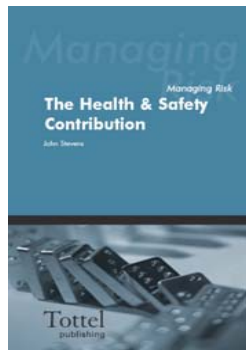
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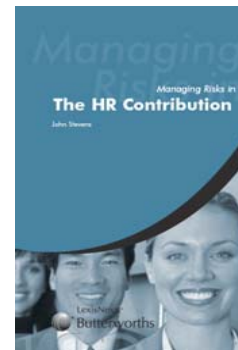
Strategic & corporate
Consultancy
(corporate risk assessment, risk
management systems,
training)

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Online & real time
Fleet Risk Profiling



**“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

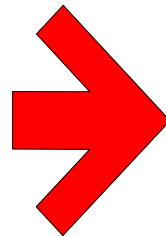
Identify how organisational aspects create downside risks

Identify if risk management system meets business needs

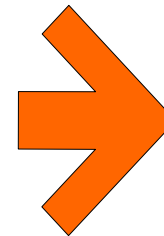
Identify how risk management can create upside opportunities

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?