

Corporate Manslaughter Consultation

The Corporate Manslaughter and Corporate Homicide Act 2007 was passed earlier this year and is due to come into force on 6 April 2008¹. It was enacted to address problems in applying the existing common law offence of manslaughter by gross negligence to organisations rather than to individual Defendants. It had been difficult to succeed with a corporate manslaughter prosecution because of the need to identify a “directing mind” behind the corporate action.

The new offence is designed to secure convictions where the seriousness of the offence arises because of a management failure causing death. The Government have said that it is designed to complement, rather than replace, existing health and safety law.

The Government have recently announced a consultation on sentencing for corporate manslaughter offences. Imprisonment will not be a possibility as a corporation obviously cannot be incarcerated! Organisations found guilty of corporate manslaughter are therefore likely to face fines and publicity orders.

The consultation paper published by the Sentencing Advisory Panel proposes fines based on a Company’s average annual turnover. Large fines are proposed to reflect the serious concerns resulting from the unnecessary loss of life involved in corporate manslaughter where a death has been caused by a gross breach of a duty of care. It is hoped that the prospect of large fines will encourage compliance with health and safety laws.

The Act also permits the courts to impose a publicity order. This would require the company to publicise the conviction. The Sentencing Advisory Panel proposes that generally, the courts should always impose such a publicity order. Proposals in the consultation paper include placing an advertisement in newspapers and trade journals or on television or radio as well as sending letters to shareholders and customers.

The consultation will close on 7 February 2008 following which advice will be given to the Sentencing Guidelines Counsel.²

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¹ See RadcliffesLeBrasseur’s previous briefing on this

² Full copies of the Consultation paper may be obtained from Gareth Sweny, Sentencing Guidelines Secretariate, Fourth Floor, 8-10 Great George, London SW1P 3AE or at www.sentencing-guidelines.gov.uk.

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