

Law Update

Recent Offences:

Causing death by careless or inconsiderate driving - 5 years or a fine or both

Causing death whilst uninsured or unlicensed or disqualified - 2 years or a fine or both

The Act permits graduated fines.

Driving without due care is defined slightly differently now and carries a £5000 maximum fine.

Corporate Manslaughter and Homicide Act - the bare bones!

An organisation to which the Act applies is committing a crime if the way in which its activities are managed or organised causes a person's death, and amounts to a gross breach of a relevant 'duty of care' owed by the organisation to the dead person.

A duty of care means any of the following duties owed by it under the law of negligence—

(a) a duty owed to its employees or to other people working for the organisation or performing services for it;

(b) a duty owed as an occupier of premises;

(c) a duty owed in connection with—

(i) the supply by the organisation of goods or services for

(ii) the carrying on by the organisation of any construction or maintenance operations,

(iii) the carrying on by the organisation of any other activity on a commercial basis, or

(iv) the use or keeping by the organisation of any plant, **vehicle** or other thing

A breach of a duty of care by an organisation is a "gross" breach if the conduct falls far below what can reasonably be expected of the organisation in the circumstances.

An organisation is guilty of an offence under the Act only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach of the duty of care.

"Senior management", in relation to an organisation, means the people who manage the organisation and make decisions.

The organisations to which the new laws apply are corporations (companies), police forces and partnerships that are also employers.

Factors for jury:

- (a) it is established that an organisation owed a relevant duty of care to a person, and
- (b) it falls to the jury to decide whether there was a gross breach of that duty.

(2) The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so—

- (a) how serious that failure was;
- (b) how much of a risk of death it posed.

(3) The jury may also—

- (a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection;
- (b) have regard to any health and safety guidance that relates to the alleged breach.

An organisation that is found guilty of corporate manslaughter or corporate homicide is liable to a fine.

Such cases will be heard in the High Court.

In relation to company or fleet drivers (whether they are driving company vehicles or not), it would come down to a jury to decide, given all the circumstances of the case, whether by NOT doing something (for example carrying out risk assessments or driver training) this amounted to a gross breach of the duty of care. Current legal feeling is that the new law will provide an 'easy' basis for prosecution, so it is likely to be used more widely in the company car environment than was originally intended to be the case when the Bill was first being drafted.