



CORPORATE HEALTH AND SAFETY COMMITTEE - 13TH FEBRUARY 2008

SUBJECT: CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT

REPORT BY: DIRECTOR OF CORPORATE SERVICES

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform Members, Management and Trade Union Safety Representatives of new Corporate Manslaughter and Corporate Homicide Act which is due to come into force on 8th April 2008.

2. SUMMARY

- 2.1 The Act has been introduced to address weaknesses in existing legislation, which make it extremely difficult for a medium or large organisation to be found guilty of corporate manslaughter.
- 2.2 It is currently possible for a corporate body to be found guilty of corporate manslaughter only where there is a directing mind that can be found guilty of gross negligence manslaughter. Difficulties in identifying a controlling mind, particularly in large organisations mean that there are few successful cases of corporate manslaughter and successful cases tend to be in small organisations with straightforward organisational structures.
- 2.3 The new Act creates a new statutory offence of corporate manslaughter replacing the common law offence of manslaughter by gross negligence for organisations. Organisations will face prosecutions where 'gross failings' in their management of health and safety result in death and they owed a duty of care to the deceased. A 'gross breach' is likely to be well below the standard of care that could reasonably be expected to be in place but which was not.
- 2.4 The Act centres on a breach in the duty of care caused by the failure of senior management to manage or organise health and safety systems. When addressing whether there was a management failing consideration will be given to systems, procedures and factors such as organisational culture.
- 2.5 Senior Management is not defined in the Act. However a Senior Manager is likely to be an individual who plays a significant role in decision-making about how all or part of the organisation is managed or actually manages or organises the activities of the organisation.
- 2.6 The Act is about organisational failings. There is no changes to existing personnel liabilities and an individual can still be prosecuted for common law manslaughter and/or be found guilty of breaches under the Health and Safety at Work etc Act 1974.
- 2.7 If an Organisation is found guilty of Corporate Manslaughter they can be subject to an unlimited fine, a remedial order (where they are required to take remedial action to address deficiencies) and/or a publicity order (where the Court orders that the details of a prosecution are publicised).

- 2.8 Courts are likely to consider compliance with Health and Safety legislation, codes of practise and guidance when looking at organisational failings. This means an organisation requires robust policies, procedures and documented systems and monitoring arrangements to manage health and safety risks.
- 2.9 The Act creates no new duties if health and safety is already well managed within an Organisation.

3. RECOMMENDATION

- 3.1 That the contents of the report be noted.

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Consultees: Nigel Barnett, Director of Corporate Services
Gareth Hardacre, Head of People Management and Development
Councillor Gwyn Price, Cabinet Member for Human Resources and Constitutional Affairs