

	RSD Internal Guidance	RIG-2008-02	
<p style="text-align: center;">Internal guidance on The Corporate Manslaughter and Corporate Homicide Act 2007</p>			
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<u>Keywords</u>	Corporate Manslaughter, Corporate Homicide, Work Related Deaths Protocol		
<u>Summary</u>	This guidance informs operational Inspectors about the Corporate Manslaughter and Corporate Homicide Act 2007 and what actions they may be required to take. This guidance applies in England Scotland and Wales.		
<u>Consultation</u>	Legal Services – Gary Adams Domestic Policy – Steve Lee, David Morris RSD – Sue Johnston, Steve Bliss, Allan Spence Legal Support – Rupert Lown Stakeholder Engagement - Paul McCormack and Keith Atkinson Nick New - Investigation process owner Revision: Ruth Luxford, Legal SET Reviewed: Helen Ayers, RMT 2017		

Detail

1. The Corporate Manslaughter and Corporate Homicide Act 2007 (CM&CHA) came into force on 6 April 2008. The Act is available on <http://www.legislation.gov.uk/ukpga/2007/19/contents>.
2. The Act itself imposes no new duties or obligations but creates a new offence under which a company can be prosecuted when a death resulting from work activity can be proven to have been caused by breach of a 'relevant duty of care' owed by the company to the deceased. The jury must decide if the breach of that duty was a 'gross breach' and that it was a result of the way in which the company's activities were organised by its 'senior management'.
3. Responsibility for the investigation and prosecution of such offences rests with either the Police or BTP and CPS or PF, as is appropriate to the circumstances, but it is anticipated that RSD Inspectors will be closely involved in such investigations and need to consider the following issues.
4. The main impact of the Act is likely to be an increasing need for RSD inspectors to advise BTP on management of health and safety at work issues as part of a jointly investigated death.
5. Inspectors managing or carrying out investigations should refer to the Work Related Deaths Protocol (WRDP) England and Wales http://orr.gov.uk/_data/assets/pdf_file/0010/5797/work-related-deaths-protocol.pdf and Scotland <http://www.hse.gov.uk/scotland/workreldeaths.pdf>
RSD Inspectors will be able to provide advice to BTP in particular on the investigation of corporate and organisational failures which may indicate an offence under either or both the CMA or HSWA and associated legislation.
6. The memorandum of understanding [http://www.orr.gov.uk/_data/assets/pdf_file/0019/3790/ORR-RAIB-BTP-ACPO MOU April 2006.pdf](http://www.orr.gov.uk/_data/assets/pdf_file/0019/3790/ORR-RAIB-BTP-ACPO_MOU_April_2006.pdf) (and for Scotland http://www.orr.gov.uk/_data/assets/pdf_file/0020/3791/ORR-RAIB-BTP-ACPOS-COPFS-0406.pdf) states that where 'serious criminal offending' is clearly indicated the criminal investigation will normally take precedence over the RAIB investigation.
7. Evidence to support the offence can only date from the commencement of the Act, i.e. evidence about the action of Senior Management must date from 6 April 2008.
8. Inspectors should also remind themselves of ORR's procedures for investigating major incidents https://orr.app.box.com/files/0/f/25750816449/1/f_166865155194.
9. The offence requires the involvement of senior management in failing to manage the company or its affairs in an acceptable manner. Guidance on what senior managers might be expected to do can be found in 'Leading Health and Safety at Work' a joint IOD and HSE publication <http://www.hse.gov.uk/pubns/indg417.pdf> .

10. The use of a [joint decision making log](#) for such investigations is recommended.
11. Evidence gathered may be shared between the parties involved in the investigation. BTP might ask RSD Inspectors to use Section 20 HSWA powers to enforce the production of material for a manslaughter case. HSE Senior Legal Advisor has produced guidance on this matter. See RGD 2013-07.
12. Following the WRDP should ensure that safety issues are identified speedily and acted upon, and to enable an investigation to continue under HSWA should corporate manslaughter not be appropriate.
13. CPS may prosecute corporate manslaughter and health and safety offences in the same proceedings, provided all the charges arose from the same circumstances.

Legal aspects of the Act:

14. In Scotland, the offence created is called corporate homicide: in England and Wales, corporate manslaughter.
15. An 'organisation' includes a partnership and CM&CHA Section 14 provides for proceedings to be brought in the name of the partnership as if it were a body corporate, not against individual partners.
16. The test for a duty of care in *Caparo Industries PLC v Dickman* [1990] 1 All ER 568 is wider than the test applied to HSWA 1974 offences. CM&CHA may mean RSD involvement in investigations of deaths that would not have involved RSD previously.
17. BTP will need to prove a breach of Health and Safety Legislation. RSD is likely to be involved in giving advice on this with regard to all the possible statutory provisions that might apply.
18. What constitutes a gross breach is at CM&CHA Section 1(4)(b) where the conduct of the organisation falls far below what can reasonably be expected in the circumstances.
19. Senior Management is defined at CM&CHA Section 1(4)(c).
20. CM&CHA Section 8 further expands on the factors for a jury to consider when deciding if the breach of the duty of care was a gross breach, the jury must decide:
 - a. Whether the organisation failed to comply with any health and safety legislation that relates to the alleged breach; and if so
 - b. How serious the failure was; and
 - c. How much of a risk of death it posed.
21. A failure to comply with Health and Safety legislation includes legislation made under

HSWA and other provisions.

22. The jury may also consider:

- a. the extent to which the evidence shows there were 'attitudes, policies, systems or accepted practices within the organization' that were likely to have encouraged or produced tolerance of any such failure;
- b. The jury may also have regard to any health and safety guidance that relates to the alleged breach.

23. RSD Inspectors should be prepared to assist BTP investigators by bringing any relevant legislation, guidance and benchmark standards to the attention of BTP.

24. Obtaining and providing copies of the relevant publications may also assist the investigation.

25. RSD may provide expert witnesses to BTP if requested. RSD inspectors assisting with a joint investigation are not acting as expert witnesses by doing so.

Penalties

- a. A fine on conviction;
- b. The court may also make a remedial order specifying steps an organisation must take to remedy any breach of deficiency; and
- c. The court may also make publicity orders.

Action

ACTION FOR RSD

RSD staff to note the legislation enforced by BTP and other Police forces and the implications for investigating work related deaths.