



Health & Safety

# MATTERS

Health & Safety Information for GMB Safety Reps

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## Corporate Manslaughter And Homicide Act

### Introduction

The Corporate Manslaughter and Homicide Act becomes law on 6<sup>th</sup> April 2008. This piece of legislation has taken a very long time to appear on the statute books, it was promised by the incoming Labour government upon coming to power nearly eleven years ago. The Bill itself had a very torturous passage through both Houses of Parliament and only just got royal assent within the legal deadline at the end of July 2007.

### Will the new Bill be effective?

GMB members were admittedly disappointed by the Bill as it was originally passed. This was due to the fact that while there would be a better opportunity to prosecute organisations (corporations) than before, it would still not address the issue of individual directors and managers who might be deemed culpable in terms of negligent behaviour leading to serious injury or even death. This was a grave omission as it was one of the main areas that the GMB had long campaigned on.

### Is there a case for individual directors to be prosecuted?

In the period from 1994 - 2004, there were 111 prosecutions of company directors. Of these, 86 were convicted of serious offences but only 11 were actually jailed. The main justification in the past for such a low prosecution and imprisonment rate was that it is difficult to identify a *directing mind*, other than within a very small employer/organisation. This was demonstrated by the fact that all the individuals imprisoned were directors of small organisations. This is obviously unfair on two counts - (i) it is disproportionate to small businesses and (ii) therefore, it does not punish larger organisations adequately enough.

### Does the new legislation change this?

On the surface the answer has to be no, and that was the rationale behind GMB's initial disappointment. However, since the bill has been published there are a number of developments which have given rise to a more optimistic outlook. Among these are the possibility of remedial action by the organisations responsible for negligent behaviour. This would include the need to address deficiencies in health and safety management, including the review of operating procedures and the circulation of this to staff. Failure to follow this can lead to an unlimited fine. In addition, the government have set up a review of sentencing and other potential punishments, within which GMB hopes that disqualification from holding directorships will be included.

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## GMB SAFETY REPS

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What do the employers think about the changes?

All “good and responsible” employers agree that negligence should be properly punished, but there are differences of opinion when it comes down to categorising what exactly constitutes negligent behaviour. However, the Health & Safety Commission (HSC), in conjunction with the Institute of Directors (IOD) have published some very forceful guidance on this, titled “Leading Health & Safety at Work - Actions and Good Practice for Board Members”. The IOD have, over the years, had a certain reputation for not being entirely, union or indeed worker friendly, and the contents of the guidance come as a pleasant surprise.

#### Leading Health & Safety at Work

The guidance is designed for organisations of all sizes and covers the public, private and voluntary sectors, and is for use by directors, governors and trustees. There are three ESSENTIAL PRINCIPALS deemed necessary to underpin good health & safety performance, these are;

- Strong and active leadership from the top - to include visible, active commitment from the top, clear communication downwards and the integration of H&S management with business decisions,
- Worker involvement - to include engaging the workforce in the promotion and achievement of safe and healthy conditions, consultation (here called “upward communication”), the provision of high quality training and effective communication and management structures,
- Assessment and review - to include the identification and management of H&S risks, seeking and following the guidance of competent advisors, the monitoring, reporting and reviewing of performance.

This suggested guidance would appear to be straightforward to many GMB safety representatives so it is useful to see them being proposed by both the HSC and IOD.

#### Where do we go from here?

A bulletin such as this can only give a very limited amount of information, much of which is selective in content. The guidance is useful in that it develops the three main principals in greater detail. This can be found at [www.hse.gov.uk/corpmanslaughter/faqs.htm](http://www.hse.gov.uk/corpmanslaughter/faqs.htm) or contact - [tristan.chard@gmb.org.uk](mailto:tristan.chard@gmb.org.uk) for more information on the subject.

As with many aspects on legislation and deaths at work any forthcoming court cases will show how effective the new legislation is. GMB awaits with interest the first test of the new Bill and how it affects employers’ collective attitude to this serious matter.

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