



Peyto Law

Local Government Briefing

Sentencing under the Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMA), which comes into force on **6 April 2008**, creates the new statutory offence of corporate manslaughter. In view of the high risk areas that local authorities have responsibility for, such as highway, housing, leisure and social care where deaths occur, the legislation has a very real bite.

The Sentencing Advisory Panel (SAP) published its consultation paper on sentencing for the offence of corporate manslaughter on 15 November 2007. Following the close of the consultation period on 7 February 2008, SAP will submit its advice to the Sentencing Guidelines Council. Draft guidelines will be formulated and issued for a further period of consultation leading to the definitive publication of the sentencing guidelines.

As part of this consultation process, SAP also proposed radical changes to fines under the Health and Safety at Work Etc Act 1974 for offences involving death.

When sentencing an organisation, the CMA provides for the following sanctions to be imposed:

- **an unlimited fine;**
- **a publicity order; and/or**
- **a remedial order.**

In respect of fines, which are proposed to be based on a percentage of annual turnover, SAP recognises that particular issues arise where the offending organisation is a publicly funded body; this is because any fine imposed may be considered an inefficient recycling of money or worse, if public services suffer as a result. However, SAP considers that it is important that a body that has committed an offence under the CMA or the HSWA does not escape sanction.

SAP considers that a publicity order should be imposed on every offender convicted of corporate manslaughter, with a failure to comply also being an offence. However, the panel also recognises that there may be cases where the

making of an order may be less appropriate, for example where the offender is providing a local public service in relation to which the public cannot exercise choice. Thus it seems unlikely that an order would be imposed on local authorities. However, because of the problems associated with imposing fines on public bodies, it is possible that Courts may use publicity orders coupled with the imposition of lower fines.

Remedial orders will set out steps which are considered necessary to address the failures which led to the death in question, the costs of which should be in addition to the fine.

Microgeneration PD Rights

The Government has laid the Statutory Instrument in Parliament which will mean microgeneration equipment on or within the curtilage of dwellinghouses (which for the purposes will include flats) will no longer require express planning consent, subject to meeting certain criteria.

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 comes into force on **6 April 2008** and introduces a new part 40 to the GPDO.

This creates 6 new classes each relating to differing forms of microgeneration equipment and each class enables the installation, alteration or replacement of such equipment:

- **Class A** relates to solar photovoltaics or solar thermal equipment installed on a dwellinghouse or on a curtilage building
- **Class B** relates to stand alone solar photovoltaics or solar thermal
- **Class C** relates to ground source heat pumps
- **Class D** relates to water source heat pumps
- **Class E** relates to flues forming part of a biomass heating system
- **Class F** relates to flues forming part of a combined heat and power system

The permissions under Classes C and D are unrestricted whilst those granted by Classes A, B, E and F are subject to restrictions and conditions.

Changes to Sex Discrimination Legislation

The EC Equal Treatment Directive requires equal treatment in employment. The Directive was revised in 2002, imposing new obligations on member states and introducing standard definitions for concepts such as 'harassment' and 'indirect discrimination'.

The Directive was implemented in the UK by the Employment Equality (Sex Discrimination) Regulations 2005, which amended the Sex Discrimination Act. However, criticism was raised from the outset of these Regulations because of their apparent failure to satisfy the requirements of the Directive; this culminated in a legal challenge of the Regulations through judicial review proceedings last year.

In line with the Directive and the High Court's ruling, the 2008 Regulations will from **6 April 2008**:

- introduce a revised definition of sex related harassment
- impose liability on employers for sex related / sexual harassment where they knowingly fail to protect an employee from repeated harassment by third parties
- extend the right of protection from pregnancy/maternity discrimination
- improve rights during compulsory and additional maternity leave for women whose expected week of childbirth begins on or after 5 October 2008, including removing the distinction between ordinary and additional maternity leave in respect of entitlement to non-pay benefits.

Community Infrastructure Levy

DCLG has published guidance explaining how the Community Infrastructure Levy (CIL) will work in practice.

The guidance explains:

- how the CIL will be set;
- how the CIL will be spent;
- the future of planning obligations;
- how, when and by whom CIL will be paid;
- the approach to exemptions and thresholds.

The Government believes that CIL should not be used for general local authority expenditure or remedy pre-existing deficiencies in infrastructure provision, unless these have been, or will in time be, aggravated by new development. However, the guidance confirms that the Government expects the CIL to be levied on most types of development, both residential and commercial.

The CIL will be a standard charge decided by designated charging authorities and levied by them on new development. In setting the CIL,

which will be "plan" led, authorities will need to undertake two main steps: identifying what infrastructure is needed and how much it will cost and working out what contribution each development should make to that cost.

Agreements under section 106 of the Town and Country Planning Act 1990 will be retained. However, where CIL has been implemented, section 106 agreements will primarily be required to:

- cover certain non-financial, technical or operational matters which cannot be dealt with outside the legal agreement framework;
- deal with the site-specific impacts that their development will have on the immediate area and without the mitigation of which the development ought not to be given planning permission; and
- ensure that there is sufficient affordable housing

The Government envisages that the CIL will be payable at the point of commencement of development and is proposing that both landowners and developers could be liable for the CIL (because of difficulties in collecting the levy from landowners where the land is unregistered or where the owner is based offshore).

Additionally, the Government has indicated that a failure to pay the CIL could result in a legal requirement to halt development.

Finally, the Planning Bill includes a power to create criminal offences surrounding CIL. The guidance indicates that offences could apply in circumstances where a person has deliberately acted (perhaps by supplying misleading information), or has deliberately failed to act, with the intention of evading a CIL liability, or obstructing a public authority in relation to CIL.

The Government aims to consult on draft regulations in Autumn 2008, with a view to finalising them in Spring 2009.

Further Information

For further information on these topics please contact:

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This briefing note is intended merely to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases.