

Corporate Manslaughter and Homicide Act 2007

The Corporate Manslaughter and Homicide Act 2007 comes into force on 6th April 2008. It introduces a new offence across the UK, for prosecuting companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health & safety with fatal consequences.

The act will see companies and other incorporated bodies, certain unincorporated bodies including partnerships, Government departments and similar bodies facing prosecution for the new criminal offence of corporate manslaughter where their gross negligence has led to the death of an employee or other individual.

Corporate manslaughter is defined in the Act as when *'management failure by senior managers of a corporation, a police force, a partnership, trade union or employer's association is a substantial element in gross breach of duty to take care causing the death of employees or others'*.

The offence targets the liability of organisations themselves and it does not apply to individuals. However, individuals can still be charged with the common law offence of manslaughter

or with health and safety offences.

Other provisions in the Act include:

- senior management is defined as those persons who play a significant role in the decision-making process about how the organisation's activities are managed and organised
- the organisation's conduct will be assessed against a number of statutory criteria, including the extent to which it had breached relevant health and safety law, whether senior managers were aware of the risk that was being run and whether they had sought to profit from the breach
- A court will consider the attitudes, policies and procedures and accepted practices within an organisation and take these into account when deciding whether an offence has been committed
- Penalties include an unlimited fine, remedial and publicity orders. A remedial order requires an organisation to take steps to remedy any management failure that led to death. The court can impose an order publicising the fact that the organisation has been convicted of the offence, providing details, the amount of fine imposed and the terms of any

remedial order made

- Existing health and safety legislation continues to apply

The Act rectifies a key defect in the present law that means organisations can only currently be convicted on manslaughter if a single individual at the top of the company is also personally liable.

Organisations should review and, if necessary, update their safety management policies and procedures to ensure they are compliant with the legislation. It is important that directors and senior managers are aware of their responsibilities and receive training as appropriate.

It is also important to ensure that you have a Directors' & Officers Liability Insurance policy which should be extended to include Corporate Liability for full protection.



A gap in cover if you use Forklift Trucks?

Following a change in stance by many insurers, we have discovered a possible gap in your Liability cover.

Accidents on your premises which involve injury to third parties or damage to their property have previously been dealt with as Public Liability claims unless the forklift truck was registered for road use. However, following recent Court cases, it has been held that forklift trucks being used in an area to which the public have access was construed as a public highway. This means that in these circumstances the forklift truck would require Motor Insurance in accordance with the Road Traffic Act requirements,

even if they are not registered for road use.

Insurers will not be explicit on how they would deal with such claims and we would therefore recommend that you should extend your Motor Fleet Policy to provide Third Party Only cover for your forklift trucks in order to obtain full protection.



Immediate Changes to Motor Insurance Database

The Motor Insurance Database (MID) has been developed by the Motor Insurers' Information Centre on behalf of the motor insurance industry to combat the problem of uninsured driving and the associated costs to insurers and, ultimately, all policyholders.

Since 19th January 2003 all policyholders with fleet or motor trade policies have been required by law to provide up-to-date details of the vehicles covered by their insurance, to populate the MID.

Currently customers are able to contact their commercial account handler and advise them of any necessary changes to be made. With immediate effect we are unable to backdate endorsements

outside of the MID timelines, for example, if we are advised of a change which took place two months ago, we are only able to process the changes with effect from the date that we are advised.

Unfortunately, the UK has one of the worst records in Western Europe for uninsured driving with an estimated one in every twenty cars on the road being driven without insurance. The

MID was set up by the insurance industry to help combat this crime, with the police being the MID's biggest customer, making over 3.8 million enquiries per month.

Remember it's no longer enough to just be insured, you must ensure that your company vehicles are on the MID. ALWAYS ensure that you advise us of any necessary changes as soon as they come into effect.

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Ryan Insurance Group are a Unitas Broker. For more information visit www.unitas-alliance.co.uk

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