



AGENDA ITEM: 9

NORTH WALES FIRE AND RESCUE AUTHORITY EXECUTIVE PANEL

28th July 2008

CORPORATE MANSLAUGHTER ACT

**Report by Paul Claydon,
Assistant Chief Fire Officer (Operational Assurance)**

Purpose of Report

- 1.** To provide Members with information in relation to the Corporate Manslaughter and Homicide Act 2007.

Introduction

- 2.** Calls for new laws to secure convictions against corporations have been raised repeatedly since the criminal case relating to the Herald of Free Enterprise disaster off Zeebrugge in 1987. Although the case collapsed it did set a precedent for corporate manslaughter being legally admissible in Court.
- 3.** The Corporate Manslaughter and Homicide Act 2007 received Royal Assent on the 26th July 2007. The Act came into force on the 6th April 2008. The Act makes provision for a new offence of Corporate Manslaughter (Corporate Homicide in Scotland).
- 4.** The Chairman and ACFO Claydon attended a briefing seminar on the 18th April 2008 sponsored by the LGA and hosted by the University of Warwick to advise local authorities on compliance strategies with regard to the Act.



The Basis of the New Offence

- 5.** The offence builds on key aspects of the current common law offence of gross negligence manslaughter in England, Wales and Northern Ireland, but makes corporations, including local authorities and a range of Crown bodies, liable for the way in which the organisation's activities are or were run by its senior managers.
- 6.** The offence is committed where, in particular circumstances, an organisation owes a duty to take reasonable care for the person's safety and the way in which activities of the organisation have been managed or organised by senior managers amounts to gross breach of this duty and causes the person's death.
- 7.** A breach of duty of care will be "gross" if the conduct alleged falls far below what can reasonably be expected of the organisation in the circumstances.
- 8.** This duty will involve examination by jury of the obligations under the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and any relevant guidance, such as "Successful Health and Safety Management" (HSG65).
- 9.** "Senior Management" is more widely defined than it would be under the doctrine of the common law, but it has the same effect of limiting those whose misconduct can result in the organisation being liable for manslaughter.
- 10.** The organisation must owe a duty of care to the victim as defined in section 2 of the Act and listed under the law of negligence e.g. as an employer, occupier of premises, supplier of goods and services, etc.



- 11.** Any duty of care owed by a public authority in respect of a decision as to the matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a “relevant duty of care”.

Context

- 12.** The Act also focuses on corporate structures and systems and on practices and policies. This puts the management of an activity into context of the organisation’s obligations under health and safety legislation, the extent to which the organisation was in breach of these and the risk to life that is involved.
- 13.** The Corporate Manslaughter and Homicide Act 2007 has maintained s37 Health and Safety at Work etc., Act 1974 and has not amended it. This provision offers considerable potential for a greater use of the prosecution discretion in the exercise of this power. Section 37 provides that where an offence under any relevant statutory provisions has been committed by a body corporate “with consent or connivance of, or to have been attributable to any neglect on part of, any director, senior manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly”.

Recommendations

- 14.** That Members note the information in relation to the Corporate Manslaughter and Homicide Act 2007.