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CORPORATE MANSLAUGHTER & CORPORATE HOMICIDE ACT (CMCHA).

Legislation comes into effect April 2008, it provides a new offence of Corporate Manslaughter (Corporate Homicide in Scotland) where an organisation's gross negligence has led to the death of an employee or member of the public.

The Offence.

The CMCHA it is to be levied against an organisation to which it could be relevant, it could be guilty of an offence, if the way in which the activities are managed or organised causes a person's death, and amounts to a gross breach of a "relevant duty of care" owed by the organisation to the deceased. The organisations to which the CMCHA applies are a corporation, a department or other body (generally government departments), a police force, a partnership, a trade union or employers' association, that is an employer.

An organisation is guilty of an offence only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach.

In as much as it causes a person's death, and amounts to a gross breach of a "relevant duty of care" owed by the organisation to the deceased.

Duty of Care.

A breach of a duty of care by an organisation is a "gross" breach if the conduct alleged, to amount to a breach of that duty that falls far below what can reasonably be expected of the organisation in the circumstances. A "relevant duty of care", in relation to an organisation, means any of the following duties owed by it under the law of negligence. A duty owed to its employees or to other persons working for the organisation or performing services for it, a duty owed as occupier of premises, a duty owed in connection with - the supply by the organisation of goods or services (whether for consideration or not), the carrying on by the organisation of any construction or maintenance operations, the carrying on by the organisation of any other activity on a commercial basis, or the use or keeping by the organisation of any plant, vehicle or other thing, a duty owed to a person who, by reason of being a person is someone for whose safety the organisation is responsible.

Senior Management.

In relation to an organisation, means the persons who play significant roles in the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or the actual managing or organising of the whole or a substantial part of those activities.

Convictions under the CMCHA and Health and Safety Legislation

Where in the same proceedings there is a charge of corporate manslaughter arising out of a particular set of circumstances, and a charge against the same defendant of a health and safety offence arising out of some

Fines and Punishments.

These will be via the Courts, it is expected that a term of imprisonment will apply along with heavy fines and penalties.

CONSTRUCTION (DESIGN & MANAGEMENT) REG'S 2007

These are now in place and we are providing training and awareness workshops. Contact us for further information.

The Regulations require a Principal Contractor (PC) and a CDM Co-ordinator (CDMC) to be appointed, but only if a project is notifiable. A project is notifiable if it lasts more than thirty working days, or involve more than 500 person days, for example 50 people working for over ten days.

The Client remains responsible for ensuring that client duties are met. Clients must ensure that Designers, Contractors and others are competent. Clients must allow sufficient mobilisation time for contractors to plan and prepare for the works. For notifiable projects the 'Lead Designer' may be appointed as CDM C but duties are wider than just design co-ordination.

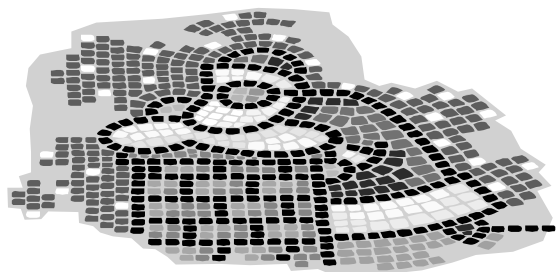
Clients should make periodic checks through the life of the project. For non-notifiable projects only simple checks are required.

- Protection for workers
- Welfare facilities in place
- Co-operation and communication.

If a client does not make appointments they become legally liable for CDMC and PC duties

The Designers Duties. Identify and eliminate hazards and reduce risks from hazards where elimination is not possible. Consider safety of those who will maintain, repair, clean, refurbish and demolish the structure. This duty applies to concept design as well as feasibility studies.

For further information and advice contact us.



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