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Buyers Prepare To Face New Liability From U.K. Corp. Manslaughter Law

By Amon Cohen

FEBRUARY 25, 2008 -- Companies that travel to or within the United Kingdom are scrambling to improve relevant health and safety processes, such as policies and risk assessments, before the Corporate Manslaughter and Corporate Homicide Act comes into force April 6. The United Kingdom will consider prosecutions for any work-related deaths that occur there, regardless of whether the employee's organization is registered there. Although this already is possible under the existing Health and Safety at Work Act, enacted in 1974, the major new development is that "courts will look at management systems and practices across the organization, providing a more effective means for prosecuting the worst corporate failures to manage health and safety properly," said the recently formed U.K. Ministry of Justice.

Under the new legislation, individual senior managers will not face criminal charges, but their organizations will be liable for substantial fines. These have not yet been set, but current proposals are for 2.5 percent to 10 percent of revenue over a three-year period. In addition, offending companies will have to pay for advertisements publicizing details of the conviction and fine.

The U.K. government expects prosecutions under the act to be rare, as it is "intended to cover only the worst instances of failure." However, David Leckie, a partner with U.K. law firm Maclay Murray & Spens, said that the treatment by police of a fatality as a potential criminal offense would prove extremely disruptive. "The chances of prosecution are small, but after four or five years of investigation, that almost seems an irrelevance by the time you get to a trial," he said.

There is no guidance from the U.K. government as to how the law would apply to deaths involving business travelers, but travel managers need to carry out a risk assessment for every business journey undertaken by an employee, said Leckie.

"You must make risk assessments in writing of employee activities that might expose them to risk and you must revise them if circumstances change," he said. "If you do not do risk assessments, then you are guilty, in my view, of a criminal offense. For day-to-day travel within the U.K., you can make a wide-ranging risk assessment, but if someone is driving from London to Inverness [in northern Scotland] in mid-winter, then you will need a special one."

Mary Ellen George, general manager of BCD Travel's consulting subsidiary Advito, said that as a result of the new laws, some Advito clients now are making security a higher priority than savings.

New York-based global investment and firm BlackRock in recent weeks established a travel risk management committee comprised of human resources, legal, security and travel representatives to develop an action and communications plan to comply with the new legislation.

The committee contracted London-based The Anvil Group for travel security and risk assessment services and developed internal processes to document all communications.

"The risk assessment process has been put together and is now working a lot closer with the travel department and all the key stakeholders," said BlackRock vice president and global travel manager Maria McSorley. "Now we have to make sure we are dotting all the I's and crossing all the T's."

For Sue Seaby, head of corporate security for Barclays, communication is key. "We have adopted a risk-based approach to travel," she said. "We have informed all staff what our responsibilities are and what their responsibilities

are, and we are constantly reviewing the situation to ensure we mitigate risks. We are also making it clear that if travelers book outside policy, then we cannot look after them."

The new law only applies if serious negligence at the senior management level can be proven. Travel managers are highly unlikely to be considered directly responsible, since the Ministry of Justice has said senior management is defined as roles such as board-level director, regional manager or head of department. However, travel managers often report to executives at this level, and since the law applies to omissions and inappropriate delegation, travel management activities will be of interest.

Statistically speaking, by far the greatest risk of fatality for corporate travelers arises while driving, and many companies examining ways to minimize this risk are noting the dangers of driving immediately after a long-haul flight.

Barclays changed its travel policy in anticipation of the new act, and encourages avoiding driving. Instead, the bank offers a taxi or limousine service to return employees to their homes after long-haul flights. "What we cannot do, short of taking their keys away, is stop travelers from getting into their cars, but under the act we must show best endeavors, which we want to do as a good employer anyway," said Seaby.

Leckie agreed that post-flight driving could leave employers exposed. "If you haven't risk-assessed it and put a fatigue management policy in place, you would be at risk there," he said at the Business Travel Show in London, where it was clear that some travel managers are taking the new act very seriously.

"It's going to have a big impact," said Sarah Palmer, a personal assistant with responsibility for managing travel at forklift and truck manufacturer Hyster Europe. "I've conducted an in-house assessment and identified 12 areas where we can improve."

U.K. and Ireland's Institute of Travel Management is organizing seminars on the subject for its buyer membership. It also has negotiated free 30-minute telephone consultations for each buyer member with Greenwoods, a firm of solicitors.

ITM executive director Paul Tilstone, who sat in on the U.K. parliamentary sub-committee hearings that shaped the new law, said its legislative intent is to expose cases in which systemic negligence led to a fatality. Businesses therefore need to show they are systemically introducing health and safety precautions. Tilstone urged companies to include instruction on travel security as part of the employee induction process.

However, meeting duty of care obligations creates complexities that can be difficult for buyers to manage, said Tilstone. "You need to assess what is reasonable for each individual," he said. "For instance, someone traveling to the U.K. may need advice on where it is safe to walk at night, but if you are from the U.K., you don't need that."

BTN editor Seth Harris contributed to this report.