



## **Corporate Manslaughter and Corporate Homicide Bill**

**Briefing for House of Commons consideration  
of Lords amendments**

**Deaths in custody**

**May 2007**

## **About Us:**

**JUSTICE** is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists.

The **Prison Reform Trust (PRT)** is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, Government and officials towards reform.

**Liberty (The National Council for Civil Liberties)** is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

**INQUEST** is the only charity in England and Wales that works directly with the families and friends of those who die in custody. This includes deaths at the hands of state agents and in all forms of custody; police, prison, young offender institutions, secure training centres and immigration detention centres. We provide a free, confidential advice service to bereaved people and conduct policy and Parliamentary work on issues arising from the deaths and their investigation.

## **Contacts:**

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## Introduction

1. The Corporate Manslaughter and Corporate Homicide Bill provides a long-overdue opportunity for Parliament to fill a significant gap in the criminal law. We strongly support the creation of the corporate manslaughter/corporate homicide offence. We also believe that the protection of this legislation should extend not only to workers, consumers, and others, but also to those held in custody.
2. On 5 February 2007 the House of Lords voted to strengthen the Government's Corporate Manslaughter and Corporate Homicide Bill. Members of all the main parties came together to ensure that deaths in custody are not excluded from the ambit of the Bill. The relevant amendment was voted in by 223 votes to 127. In this short briefing JUSTICE, the Prison Reform Trust, Liberty and INQUEST urge MPs to vote in favour of these amendments when the Bill returns to the House of Commons on 16 May.

## Amendments

3. The amendments the Lords incorporated were as follows. In Bill 170 06-07, Lords Amendments to the Corporate Manslaughter and Corporate Homicide Bill, they are numbered: **2, 3, 5, 6 and 10.**

### *Clause 2*

Page 2, line 29, at end insert –

“(d) a duty owed to anyone held in custody.”

Page 3, line 12, at end insert –

““custody” includes being held in prison, secure mental healthcare facilities, secure children’s homes, secure training centres, immigration removal centres, court cells and police cells, and being subject to supervision by court, prisoner and detainee escort services;”

### *Clause 3*

Page 3, line 37, leave out “or (b)” and insert “(b) or (d)”

Page 3, line 40, leave out “or (b)” and insert “(b) or (d)”

*Clause 5*

Page 5, line 8, leave out “or (b)” and insert “(b) or (d)”

## **Effect of Amendments**

3. The first part of the amendment would ensure that deaths in custody are within the ambit of the offence by adding a separate category to the types of ‘relevant duty of care’ in clause 2 of the Bill: a ‘duty owed to anyone held in custody’. ‘Custody’ is defined in the second part of the amendment to include not only prisons, but also other places of detention such as immigration removal centres, police cells and court cells, and to those being escorted, for example from court to prison.
4. The third part would ensure that the ‘exclusively public function’ exemption in subclause 3(2) of the Bill would not exclude deaths in custody from the ambit of the offence. The fourth would ensure that the exception for duties of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function would not apply to a duty owed to anyone held in custody. The fifth would ensure that the exception for policing and law enforcement activities in subclause 5(3) would not apply to deaths of those who have been taken into and are held in custody.

## **Briefing**

5. JUSTICE, the Prison Reform Trust, Liberty and INQUEST came together to support these amendments as we shared profound concerns at the exclusion of deaths in custody from the Corporate Manslaughter and Corporate Homicide Bill. We all strongly support the Bill which we consider to provide a long-overdue opportunity for Parliament to fill a significant gap in the criminal law. The amendment is not designed to undermine or weaken the Bill in any way but, rather, to strengthen it by extending the protection and justice that it promises to people held in custody.
6. The UK is obliged, under Article 2 of the European Convention on Human Rights to establish a legal framework in which those responsible for homicides may be brought to justice, which acts as a deterrent against the commission of such offences. The

European Court of Human Rights has emphasised that '[i]n the context of prisoners...persons in custody are in a vulnerable position and...the authorities are under a duty to protect them.'<sup>1</sup> This has led the Joint Committee on Human Rights to conclude that the exemption for deaths in custody in the Bill would put the UK in breach of its obligations under Article 2:

"We remain of the view, for the reasons given in our earlier report, that the various restrictions on and exclusions from the scope of the offence make it clear that, as currently hedged about with so many qualifications and exclusions, the new offence ... fails to satisfy the obligation in Article 2 to protect the right to life."<sup>2</sup>

7. Between 1995 – 2005 INQUEST's casework and monitoring service has highlighted over 2000 deaths in police and prison custody. Many of these deaths have raised issues of negligence, systemic failures to care for the vulnerable, institutional violence, racism, inhumane treatment and abuse of human rights. Despite a pattern of cases where inquest juries have found overwhelming evidence of unlawful and excessive use of force or gross neglect, no police or prison officer has been held responsible, either at an individual level or at a senior management level, for institutional and systemic failures to improve training and other policies. This is even the case when inquests return 'unlawful killing verdicts'. Since 1990, 10 'unlawful killing' verdicts have been returned by inquest juries but none of them has led to a successful prosecution.<sup>3</sup> While inquests can provide a verdict and the coroner can suggest remedial measures under rule 43 of the Coroners' Rules 1984, these recommendations have no binding force.
  
8. The Government also points to public inquiries as an alternative route of accountability – but it refused to hold public inquiries into the deaths of both Zahid Mubarek and Joseph Scholes. In both cases,<sup>4</sup> the Government fought the families' attempts to have a public inquiry held in the civil courts. Without a legal victory by the family, the Zahid Mubarek Inquiry<sup>5</sup> would not have been held. Without a similar verdict in the ongoing *Scholes* case, it is very unlikely that a public inquiry will be held. An inquiry – for which a family have had to fight – held years after a death, is in any event

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<sup>1</sup> *Keenan v UK*, App. No. 27229/95, judgment of 3/4/2001, ECtHR (Third Section), para. 91.

<sup>2</sup> Joint Committee on Human Rights: Second Report, session 2006-2007, HL 34/HC 263, para

<sup>3</sup> [www.inquest.org.uk](http://www.inquest.org.uk)

<sup>4</sup> Cf *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51 ; *R (Scholes) v Secretary of State for the Home Department* [2006] EWCA Civ 1343.

not sufficient in itself to provide an effective deterrent against gross negligence causing deaths in custody.

9. The purpose of an inquest, and of investigations by bodies such as the Independent Police Complaints Commission and Prisons and Probation Ombudsman, is not to determine liability.<sup>6</sup> We believe that in an appropriate and severe case a corporate manslaughter prosecution could be the only appropriate way of holding organisations to account and providing justice to bereaved families. The Joint Committee on Human Rights has said that: “it is precisely in these sorts of cases that the case-law of the European Court of Human Rights stresses the inadequacy of other mechanisms of accountability and the importance of the deterrent effect of the judicial system in place and the significance of the role that system is required to play in preventing violations of the right to life.”<sup>7</sup>
10. We agree with the Home Affairs and Work and Pensions Committees that there is ‘no principled justification for excluding deaths in prison or police custody from the ambit of the offence’.<sup>8</sup> We also agree with the Independent Police Complaints Commission (IPCC)<sup>9</sup> and the joint report from the Home Affairs and Work and Pensions Committees that having the option of a corporate manslaughter prosecution is important to maintain public confidence. These amendments could help to ensure that those in custody are properly protected from gross negligence causing death.
11. Finally, four common misconceptions about the effect of the amendment must be addressed:
  - First, the amendments would not lead to a corporate manslaughter prosecution for every death in custody. For an organisation to be convicted, the requirements of Clause 1 would have to be satisfied: there must have been a *gross breach* of a relevant duty of care. This is a very high burden and would only be crossed if a jury concludes that the conduct of the organisation “falls far below what could reasonably be expected *in the circumstances*” (Clause 1(4)). Particular account would, therefore, have to be taken of any particular difficulties that face those who manage prisons and other places of detention.

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<sup>5</sup> [www.zahidmubarekinquiry.org.uk](http://www.zahidmubarekinquiry.org.uk).

<sup>6</sup> Although an IPCC investigation may result in the IPCC or police referring the case to the CPS.

<sup>7</sup> Joint Committee on Human Rights: Twenty-Seventh Report, session 2005-2006.

<sup>8</sup> *Home Affairs and Work and Pensions Committee: Draft Corporate Manslaughter Bill*, First Joint Report, 20 December 2005, HC 540-I.

- Secondly, these amendments would not impose criminal liability upon individuals, but would merely apply the corporate offence to deaths in custody.
- Thirdly, these amendments would not impact on the ability of the police to respond to public threats or emergencies like suspected terror plots. The amendments only relate to how people are treated who have been taken into custody.
- Finally, these amendments would not lead to questions of “public policy” being decided by the courts. The general exemption in the Bill relating to “decisions as to matters of public policy” (Clause 3(1)) would not be affected in any way by the amendment. As Lord Ramsbotham (former HM Inspector of Prisons) explained in the House of Lords: “This is not about policy; it is about good management. Good management does not depend on resources but rather on the whole ethos, structure and direction of management. That is what this is all about.”<sup>10</sup>

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**May 2007**

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<sup>9</sup> [http://www.ipcc.gov.uk/ipcc\\_response\\_corporate\\_manslaughter.pdf](http://www.ipcc.gov.uk/ipcc_response_corporate_manslaughter.pdf)

<sup>10</sup> HL Deb, 5<sup>th</sup> Feb 2007, col 522