



JUSTICE

Corporate Manslaughter and Corporate Homicide Bill

Suggested amendments for House of Lords Grand Committee

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1. 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.
2. JUSTICE responded to the Home Office consultation on the Draft Corporate Manslaughter Bill, and gave both written and oral evidence to the Home Affairs/Work and Pensions Committees' inquiry into the draft Bill.¹ Several of our concerns were taken up by the report of the inquiry.² We briefed the House of Commons on the Bill and suggested amendments for Standing Committee and Report stage. We have also briefed members of the House of Lords on the Bill at Second Reading.
3. The amendments herein focus upon the following areas of concern:
 - **The 'senior management' test**
 - **The scope of the 'relevant duty of care'**
 - **The level of 'public policy decisions' that should be exempted from the offence**
 - **The scope of the exemption for 'exclusively public functions'**
 - **The scope of the exemptions for military activities**
 - **The scope of the exemptions for policing and law enforcement**
 - **Orders on conviction**
 - **The requirement that the DPP consent to proceedings**
 - **The extension of the Bill to military custodial facilities overseas**
4. We are particularly concerned at the continuing exclusion from the Bill of deaths in custody. At a time of extreme prison overcrowding those in custody are particularly vulnerable, and we do not accept that there is any principled reason to exclude them from the Bill's protection. We therefore include several amendments in order to ensure that those in custody are properly protected from gross negligence causing death.

¹ *Home Affairs and Work and Pensions Committee: Draft Corporate Manslaughter Bill*, Written Evidence, 26 October 2005, HC 540-II and HC 540-III.

² *Home Affairs and Work and Pensions Committee: Draft Corporate Manslaughter Bill*, First Joint Report, 20 December 2005, HC 540-I.

'Senior management'

Clause 1

Page 1, lines 3-4, leave out from "if" to end of line 4 and insert "a management failure by the organisation"

Page 1, line 14, leave out paragraph (3)

Page 1, leave out from line 22 to end of line 4 on page 2.

Briefing

While we welcome the amendment of this clause in Standing Committee, we believe that the amendments made to do not go far enough to remove the 'senior managers' aspect of the offences of corporate manslaughter and corporate homicide. 'Senior management' must still have been responsible for a 'substantial' element of the breach that causes death.

We believe that this test will retain some of the problems with the current law, making it difficult to convict larger corporations. It will result in inconsistency since a death caused by a policy applicable in a single factory may be 'corporate manslaughter' if the factory is owned by a small business, but merely a health and safety offence if it is owned by a multinational corporation with many factories. We expect that large corporations will, acting upon legal advice, delegate responsibility for health and safety downwards in order to attempt to evade liability if this formulation is retained. Evidence given to the Select Committees' inquiry on the draft Bill suggested that such delegation *had already occurred* in expectation of the Bill.³

Further, consideration of the activities of senior management – and decisions as to who is a member of senior management according to the test in subclause 1(4)(c) – may take up valuable time in court and complicate proceedings unnecessarily. The formulation 'management failure' was preferred by the Law Commission, in its consultation on involuntary manslaughter,⁴ and by the government in 2000.⁵ In our view, this latter formulation sets responsibility at the correct level, preventing organisations from being liable for this offence in relation to every act of every junior employee, but ensuring that larger corporations cannot evade liability.

³ Cf HC 540-I, para 135.

⁴ Cf Law Com No. 237, Draft Bill s4(1).

'Relevant duty of care'

Clause 2

Page 2, lines 16 to 17, leave out from "any" to "owed" and insert "duty".

Page 2, lines 18 to 29, leave out paragraphs (a) to (c).

Page 2, leave out from beginning of line 44 to end of line 12 on page 3.

Page 3, leave out line 25.

Briefing

These amendments would simplify and expand the scope of the relevant duty of care so that the Bill would cover any duty owed in the law of negligence, unless excluded by clauses 3 to 7. We believe that where gross corporate negligence causes death, any exception from liability should be justified specifically and that the Bill should not create sweeping exemptions.

⁵ 'Reforming the Law on Involuntary Manslaughter: the Government's Proposals' (2000).

‘Public policy decisions’

Clause 3

Page 3, line 31, after “in respect of a” insert “ministerial”

Page 3, line 46, at end insert –

“ministerial” means a decision made by one or more Ministers of HM Government, Scottish Ministers, Welsh Ministers, or Northern Ireland Ministers.

Briefing

We agree with the Home Affairs and Work and Pensions Committees that the exemption of public policy decision-making from the ambit of the offence ‘should only apply at a high level of public policy decision-making’.⁶ The effect of these amendments would be that only decisions taken at ministerial level would be protected from liability, unless excluded elsewhere in the Bill.

⁶ Cf HC 540-I, para 233.

‘Exclusively public functions’

Clause 3

Page 3, line 35, leave out subsection (2).

Briefing

We welcome the application of the offence to public authorities; however, we are concerned that in reality the extent of this application could be very narrow. In particular, the definition of an exclusively public function in clause 3(4) of the Bill is so broad that it could be interpreted to cover everything that a statutory body does.⁷ The most obvious areas where an exception could be argued for are covered separately in the Bill. We therefore question what the ‘exclusively public function’ test adds for public authorities, apart from the exemption of many deaths in custody, with which we disagree.

In our view, alternative methods of accountability have not proved adequate to protect people from non-natural deaths in custody. Nor so has the possibility of individual liability for manslaughter: of the cases known to INQUEST from 1991 to 2 August 2006, there were no convictions for manslaughter in relation to deaths in custody following an inquest verdict of unlawful killing.⁸

This substantial exemption would also apply to private custodial corporations; in our view there is even less justification for allowing them to escape liability for this offence. They are not electorally accountable. Recent concerns over the treatment of children in privately-run secure training centres (STCs), after the death of 15-year-old Gareth Myatt in an STC,⁹ and the findings of the Carlile Inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children,¹⁰ highlight the need for proper accountability for privately-run, as well as publicly-funded, institutions.

This amendment would remove any exemption for public functions (other than those elsewhere in the Bill).

⁷ Cf HC 540-I, para 212.

⁸ Cf www.inquest.org.uk.

⁹ Cf ‘Youth’s death sparked review’, BBC News, 17 February 2006, <http://news.bbc.co.uk/1/hi/england/northamptonshire/4723356.stm>.

Clause 4

Page 4, line 12, leave out from 'on' to 'directly'

Briefing

In considering the scope of exemptions for the military it is important to recall the jurisdictional extent of the Bill as laid down in clause 22. In particular, foreign land will not be included. In these circumstances, in our view, the current scope of the exemption is too broad as it is important that soldiers are protected during basic training and ordinary activities on UK military bases, etc., that are not of necessity hazardous.

The phrase 'in preparation for [operations within subsection (2)]' in subclause 4(1)(b) could, if broadly interpreted, mean that such non-hazardous activities on UK bases were not included in the Bill. This amendment would remove the phrase 'in preparation for, or' from subclause (1)(b).

While not putting forward a specific amendment, we are also concerned that the phrase 'it is considered needs to be carried out, or carried out in that way' in subclause 4(1)(c) may compromise legal certainty since it does not specify by whom these matters are to be so considered. Is it the court? The jury? The Ministry of Defence? The armed service in question? The individual commanding officer? The language used here could give rise to problems in a case where for example, the individual commanding officer considered the hazardous training necessary but the MoD disagrees.

¹⁰ Available from www.howardleague.org.uk.

Clause 5

Page 4, line 36, leave out from 'on' to 'directly'.

Page 5, line 6, leave out subsections (3) and (4).

Briefing

In our view, the exceptions for policing and law-enforcement are excessively broadly drafted. The cumulative effect of the exceptions is to remove almost every situation in which a member of the public could ever die due to gross negligence on the part of a police force from the ambit of the Bill. Those excluded include people who die in police custody; those unlawfully killed in police shootings; those who die from injuries sustained on arrest; those killed during high-speed police car chases. Conversely, the situations in which the Bill protects members of the public are the least dangerous – such as fatal accidents due to defective police premises. Under clause 5, the only situations in which police can be liable are as employers and as occupiers of premises. Members of the public, therefore, will very rarely be protected.

We do not believe that police forces, as opposed to other organisations, should be granted impunity for gross negligence causing death in such a wide range of circumstances. This is particularly important because of the vulnerable position of the citizen vis-à-vis the police, and the difficulty of obtaining convictions against individual police officers in such cases.

Further, police officers themselves will unnecessarily lack protection in some situations because of the phrase 'in preparation for' operations falling within subclause (2). This phrase, if broadly interpreted, could mean that officers were not protected even in situations that were not of necessity hazardous. These amendments would remove this phrase. They would also remove the more general exception for police and law enforcement activities in subclause (3). The definition subclause, subclause (4) would then become unnecessary.

While not putting forward a specific amendment, we are also concerned that the phrase 'it is considered needs to be carried out, or carried out in that way' in subclause 5(1)(c) may compromise legal certainty since it does not specify by whom these matters are to be so considered. Is it the court? The jury? The Home Office? The relevant chief constable? The senior officer in charge of the particular training on the day in question? The language used

here could give rise to problems in a case where for example, the senior officer at the scene considered the hazardous training necessary but the Home Office disagrees.

Clause 9

Page 8, line 6, leave out 'remedial'

Page 8, line 6, after 'orders' insert 'on conviction'

Page 8, leave out line 7 and insert 'Orders on conviction'

Page 8, line 15, at end insert:

- '(1A) A court before which an organisation is convicted of corporate manslaughter or corporate homicide may order it to take specified steps to:
- (a) prevent the occurrence of future instances of the breach mentioned in section 1(1);
 - (b) publicise its conviction for corporate manslaughter or corporate homicide and any associated convictions;
 - (c) make reparation to any person or persons particularly affected by the death of the victim of corporate manslaughter or corporate homicide, or to the public or any section of the public.

Page 8, line 16, leave out 'only'

Page 8, line 17, after 'order' insert ',or on the court's own motion'

Briefing

These amendments would alter the types of order that could be made by the court upon conviction and the circumstances in which they could be made. The amendments would allow the court, in addition to making remedial orders, to order the organisation in question to take steps to prevent future occurrences of the breach in question (particularly relevant in cases where the breach in question is not ongoing), to publicise its conviction and any associated convictions, and to make reparation to the family of the deceased or to the public at large or any section of the public. We hope that such orders would act as a greater deterrent than a fine alone could do in some cases.

These amendments would also allow orders to be made without a prosecution application.

Clause 15

Page 12, line 10, leave out Clause 15

Briefing

This amendment would remove the requirement that a prosecution for corporate manslaughter can only take place with the consent of the Director of Public Prosecutions or the DPP for Northern Ireland. The effect of clause 15 is to prevent private prosecutions from being launched for this offence. While the prosecution of criminal cases should normally be a matter for the state, it is in our view inappropriate that private prosecutions should be prevented in relation to an offence for which a government department can be held liable, when they are allowed for other offences. Particularly where the organisation under investigation is a police or law enforcement body or the CPS itself, a failure to consent to prosecution may give rise to accusations that the DPP is seeking to insulate the relevant organisation from proceedings. It is particularly inappropriate for the DPP to be asked to consent to the prosecution of his own department, which is included in the list in Schedule 1 to the Bill.

Clause 22

Page 14, line 9, at end insert

- '(f) in any place of detention managed by the United Kingdom armed forces, if the person in section 1(1)(a) is detained by the United Kingdom armed forces in that place.'

Briefing

In *R. (on the application of al-Skeini and others) v. Secretary of State for Defence*¹¹ it was held in relation to the death of Baha Mousa, who died in a military prison in Iraq in British custody, that the Human Rights Act applied to the activities of the British armed forces in detaining Iraqi nationals. This amendment would extend the territorial jurisdiction of the Bill to include any place of detention that is operated by the UK armed forces.

¹¹ [2005] EWCA Civ 1609.

Schedule 1

Page 15, line 26, at end insert

'Her Majesty's Prison Service'

Briefing

This amendment would add the Prison Service to the list of central government bodies listed in Schedule 1, in order to ensure that the Prison Service could be held liable for this offence.

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