

# Summary of responses to Corporate Manslaughter: The Government's Draft Bill for Reform (Cm 6497 March 2005)

## INTRODUCTION

In March 2005 the Government published a draft Bill for reforming the law on corporate manslaughter<sup>1</sup>. The Bill sets out proposals for a new specific offence of corporate manslaughter. This is intended to make it easier to prosecute an organisation where the death of an employee or member of the public has been caused through gross negligence in the way the organisation was managed at a senior level.

The Government received over 180 responses to its consultation. Responses were received from industry associations and businesses, trade unions, professional bodies, public services, victim support groups, organisations concerned with health and safety and risk management, lawyers and legal organisations, academics and members of the public. This summary looks at commonality and differences in the points made by respondents. A full list of respondents is at Annex A. Many of these subsequently agreed that their response should be considered by the Parliamentary committee looking at the draft Bill in pre-legislative scrutiny<sup>2</sup>. Those responses have been published as HC 540-II<sup>3</sup>.

Responses, together with the report of pre-legislative scrutiny, will be used in the further development of legislation to reform of the law.

## OVERVIEW

There was widespread agreement that the current law is in need of reform; that the identification doctrine<sup>4</sup> is too restrictive a basis of liability and reform necessary to properly hold to account grossly negligent organisations and improve equity between small and large companies.

*The TUC has, for many years been aware of the failings within the existing law and believes that this change is necessary if corporate responsibility on health and safety is to be improved, and the relatives of those killed as a result of corporate failings are to see justice done.*

TUC

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<sup>1</sup> <http://www.homeoffice.gov.uk/documents/2005-corporate-manslaughter/?version=1>

<sup>2</sup> Pre-legislative scrutiny is a process by which Parliament can examine and make recommendations about legislative proposals before a Bill is introduced to Parliament. A sub-committee of the Home Affairs and Work & Pensions Select Committees announced in July 2005 that it would scrutinise and report on the draft Corporate Manslaughter Bill.

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm/cmhaff.htm>. Some respondents submitted additional or different memoranda to the committee and the committee received other written material not sent to the Home Office. All material will be taken into account in considering the way forward. However, except where mentioned otherwise, this summary relates to material submitted to the Home Office.

<sup>4</sup> This requires a single very senior individual in an organisation to be grossly negligent, and guilty of manslaughter, for the organisation itself to be convicted.

*As the law currently stands, the GMB believes that it is far too common for gross managerial failures leading to death and serious injury to pass without adequate sanctions being taken against those responsible.*

GMB

*We [ ] welcome this Government's proposal to legislate in this area, in the hope that the reform will not only bring to account those companies whose conduct has been the cause of loss of life, but also as a means of putting safety further up the boardroom agenda.*

Disaster Action

*Clearly, it cannot be right that corporate liability can only apply if all the elements of the offence can be proved against one member of the directing mind of the company. CBI*

A wide range of respondents welcomed the draft proposals as being broadly in the right direction. Trade union respondents, health and safety groups and groups representing victims offered strong support for legislation but generally felt that the Bill did not go far enough in a number of respects, in particular by not providing for individuals to be prosecuted and not offering new forms of sentencing, and might as a result have little impact on improving health and safety. Industry welcomed the intention to target the offence on the most serious cases, to focus on systematic failings in organisations and not to impose new regulatory burdens. Clarity was needed to ensure that that was the case otherwise the proposals could lead to risk aversion in industry.

*The draft legislation does not currently provide the comprehensive framework necessary to prevent or deter further deaths or serious injury. There a number of positive proposals within the draft Bill, and as such it represents a step in the right direction. However, the proposals it contains need to be built upon through the inclusion of a wide range of additional measures [ ] in order to deliver the kind of significant change in managerial and corporate behaviour that will result in a much needed reduction in the number of deaths and serious injuries at work.*

GMB

*We support the assertion that a prosecution under this Bill would only be appropriate in the most serious of cases, and that it is intended to supplement rather than replace actions under established health and safety legislation.*

EEF- The Manufacturers' Organisation

The need to focus on serious and wider, systematic management failings was shared by others. But there were a range of concerns from across the board about the way parts of the proposals would work, in particular the test for senior management failure and the criteria for assessing whether a management failure had been gross. A few (notably individual respondents from the aviation industry) expressed concern that the offence might increase blame cultures and have a detrimental effect on accident investigation and health and safety.

## **THE OFFENCE**

### **Scope of the offence**

*The draft Bill sets out proposals for the type of relationship an organisation would need to have with the victim in order to come within the scope of the offence. This is based on the organisation owing a duty of care to the victim. The nature of the duty of care is defined in terms of the law of negligence (the current basis for gross*

*negligence manslaughter) to include duties owed by organisations to employees, as occupiers, and in the supply of goods or services or carrying on commercial activities. The offence would not, however, extend to certain core public functions or to public policy decisions made by public authorities.*

### The requirement to owe a duty of care

Most respondents were content with the principle that the offence should relate to a breach of a duty of care and the majority of respondents either did not comment on or were content with the range of duties *included* in the definition (employers, occupiers etc). There was some suggestion that the definition could usefully be extended to include duties arising from the Health and Safety at Work Act 1974 (HSWA), although examples were not cited of cases where the new offence ought apply and which would be covered by such an approach but not by the Bill as proposed.

### Duties where contractors and subsidiaries are involved

A concern in industry was how far duties would extend through subsidiaries to parent companies and a view that a parent company should not be prosecuted unless directly to blame. A particular issue was that the offence would apply differently depending on the corporate structure adopted by an organisation, as this structure would determine the identity of the corporate body owing the duty of care (and accordingly, where exactly in the organisation the senior managers were for the purpose of the offence). This was identified as a very serious weakness by the CBI. There were also specific concerns that prosecutions might be brought against parent companies solely to access the funds of the parent company or in order to seek double recovery. The position of sub-contractors and agency workers was raised by a number of trade unions and others, who felt that the Bill needed to be clear where duties lay in these circumstances. Generally though it was not clear whether these respondents were looking for the Bill to redefine (for the purposes of the offence) what duties would be owed by parent companies and contractors or whether they sought clarification of where such bodies already owed duties in the law of negligence (which the new offence would rely on).

*If the distinction [between the role of a parent company and an operating subsidiary company] is not recognised in the formulation of the offence or in practice in the way in which investigation and prosecution authorities approach the new offence the result may be to:*

- (a) duplicate effort between different groups and companies*
- (b) target investigations and prosecutions in the highest profile area*
- (c) pass to juries for decision the legal issue of corporate duties of care.*

Serco-NedRailways

*The Bill must be absolutely clear where duties lie, and where the target, or targets, of any corporate offence. For example, it is not clear from the Bill who might be liable in the event of the death of a sub-contractor on a multi-contractor site. Nor does the Bill seem to address adequately the position of an agency worker killed at a workplace where the occupier is not the agency worker's employer.*

Amicus

## Public policy and public functions

Respondents generally welcomed the application of the offence to public bodies (and the lifting of Crown immunity in this respect), with the notable exception of Justice (see below under **Application**), but had concerns about the extent to which the Bill would retain exemption for certain public functions and decisions. The Centre for Corporate Accountability and Law Society questioned whether the draft Bill would be compatible with the European Convention on Human Rights.

*Whilst the exclusion of the Armed Forces may well be in the public interest we are extremely concerned at the proposed exclusion of public authorities from a duty of care for the purposes of the Act including allocation of resources and weighing of competing public interests. Agencies such as the Food Standards Agencies and HSE do make very significant decisions and enforce actions impacting on the safety of operations and products in the UK market place and it is right that at least the same high standards should be expected from them in the management of such matters as are expected from commercial operators. Where a public authority has duties of care in negligence they should have duties under this law, this reflects the norms and expectations of society.*

CBI

*While accepting that there are areas of public activity where for policy reasons it is determined that it is not appropriate for corporate manslaughter legislation to be the appropriate way of holding Government or public bodies to account, the IoD is not convinced by the argument set out at paragraph 18 that the “range of accountability” mechanisms to which they are subject provides a convincing argument. ... It does, however, appear reasonable to exclude the making of public policy decisions.*

Institute of Directors

Industry and the public sector respondents generally agreed that *public policy decisions* should be excluded from the scope of the offence and a number felt that this principle should extend to other organisations making decisions about the allocation of public funds (for example, by the rail industry or utility companies). Responses from those in other sectors tended not to support this where the issue was addressed. A specific concern raised by the Transport and General Workers Union and UCATT was that this exemption potentially exempted the Crown entirely from the offence as any decision by a Crown body might be argued to be a public policy decision.

*We do appreciate that public policy decision making raises sensitive questions. Decisions involving the use of funds of limited funds can involve a difficult balancing of public interest factors in which the use of limited funds will need to be considered. ... It would seem to us that any set of decisions that did fall as low as this [far below what could reasonably be expected] and did result in death should not be immune from prosecution.*

Centre for Corporate Accountability

The question of excluding certain public functions (specifically, duties arising from the supply of services that were an “exclusively public function”) generated a good deal of response. Some respondents argued that any exemptions should be restricted to the armed forces or other areas involving national security (although the potential breadth of the exemption relating to the armed forces raised a number of concerns). Others recognised that there might be a case for excluding some public functions and specific cases were put for excluding fire services and police operational matters. Of particular concern was the example given in the explanatory text to the draft Bill that deaths relating to the exercise of prison custody functions

would be exempt. Respondents variously described this as anomalous, compared deaths in custody to deaths in health care, while others had more general objections in principle.

*It may not be possible to blanket include public functions within the offence of corporate manslaughter, but perhaps to look at specific areas such as custody where the public service may have a high degree of control over the environment.*

Independent Police Complaints Commission

## **Management failure by senior managers**

*The draft Bill proposed an offence based on a (gross) failure in the way in which an organisation's activities were managed or organised by its senior managers. Senior managers were defined as people playing a significant role in managing or making decisions about a substantial part of the activities of the organisation.*

Respondents across the board thought the focus on management failure was a constructive move away from the identification doctrine, and in principle supported the concept of looking at wider, corporate management failings in an organisation. A common concern though was that the route used to achieve this – a management failing by senior managers - would continue to focus the offence on the culpable actions of individuals, doing little to broaden the identification doctrine. A further fear, particularly of trade unions, safety organisations and groups representing victims, was that designating a tier of managers as “senior managers” for the offence would encourage delegation of responsibility for health and safety to avoid corporate liability, with the effect of reducing the priority of health and safety in organisations.

*Amicus strongly supports a new offence that targets very serious failings in the strategic management of a company's activities that have resulted in death. Like the Government, Amicus believes the corporate manslaughter law must focus on the wider management failings within an organisation.*

Amicus

*We accept that the Law Commission office was probably drawn too widely. It appears that its loose wording could have meant that any serious failure at any level of management – including at supervisory level – could have resulted in the company being prosecuted for manslaughter. If a failure takes place which is solely the responsibility of a supervisor should the company be prosecuted? This is a difficult position to justify.*

Centre for Corporate Accountability

*The Draft Bill introduces a “senior managers” test that would open up a loophole through which negligent organisations could escape prosecution (ie by delegating health and safety management to non-senior management levels they would fall outside of the scope of the Bill and the reach of the law).*

Transport and General Workers Union

There was some support for the definition of those who would be considered “senior managers” and some respondents, from across the various sectors, thought that the proposed definition would apply to managers at the right level and struck the right balance. Others thought the level of management ought to be more narrowly defined and, as proposed, could encompass those too low down organisations. At the other end of the spectrum, some respondents felt that management failure at any level should be capable of attracting liability. Overall, the

majority of respondents thought the definition left considerable uncertainty about who would be considered a senior manager and how that might vary according to the size and structure of organisations (although not all thought that a negative thing). Many thought it important that the definition of senior manager should not lead to differences in ability to prosecute offences depending on the size of a company.

*We welcome the definition of such a person [a senior manager], which is a significant move away from the concept of a “controlling mind” at common law. And the avoidance of a narrow definition allows the full assessment of the role of such a person within the whole of the particular organisation thus preventing the purpose of the proposed statute being defeated.*  
Bar Council

*The definition of senior managers is confusing and restrictive ... In larger companies where there is a complex management structure or, for example on construction sites where there may be a number of companies to whom work is subcontracted, it may be no easier to bring a charge of corporate manslaughter than it is at present.*  
Thompsons Solicitors

*The definition as presently drafted is wide enough to catch a broad spectrum of managerial activity. In most large commercial organisations, there will be a large number of management positions that could potentially have a significant role of some form on the organisation’s processes. This could encourage a “fishing expedition” approach on the part of regulators, who are likely to come under pressure to prosecute under this new legislation.*  
Linklaters

*“[W]hatever the level of management identified with controlling the corporation, a formula allowing the conduct of the organisation of the business as a whole should be considered rather than restriction to the conduct of a narrowly defined senior management role.*  
CBI

*It should be sufficient that the failings of the organisation as a whole amounted to a gross breach. ... The consequence of the inclusion of the words “senior manager” will be to divert the court’s attention to intricate questions of the degree of involvement of a number of individuals, even in cases where the jury would otherwise be satisfied that the behaviour of the organisation as a whole fell so seriously short that it could be considered to be a gross breach.*  
Prospect

A further concern, from some industry respondents, related to the impact of proceedings against a corporation on individual senior managers. These could have serious adverse effects on the reputations and careers of senior managers who would not have had the opportunity to defend themselves in court. This in itself could lead to risk aversion.

## **Gross breach and statutory criteria**

### Threshold

Across the sectors respondents broadly supported the proposal to retain a high threshold of gross breach for the offence, defined as conduct falling far below what can reasonable be expected in the circumstances. Some industry respondents thought that the test needed to have an element of intent, such as disregard for risks. A wider concern was that the definition remained imprecise and some felt it was no improvement on the current test of gross negligence (which at least had the

advantage of precedent in case law). A significant concern for some industry respondents was that despite the high level of the test there would, as at present, in high profile cases, be a pressure to pursue prosecutions even where the high level would not be met and a concern that in the event of a death a breach would always be considered gross.

There was also a view that the high threshold was not reflected in the statutory criteria for assessing an organisations culpability and that comparing performance against the standards that could be expected of *the* organisation in the circumstances might lead to different standards being applied to organisations, depending on their own operating health and safety standards;

*ATOC members agree that a high threshold must be retained for any offence of gross manslaughter. Health and safety legislation exists (and includes a reverse burden of proof) to deal with and punish system failures outside this category. It would create duplication and inconsistency for the separate offence of manslaughter to extend itself beyond the small category of cases summarised in the foreword as "the very worst cases of management failure".*

Association of Train Operating Companies

*It is important that legislation is restricted to a gross breach and in this respect, the wording of "conduct falling far below what can reasonably be expected of the organisation in the circumstances" is a good starting point. We believe that this could be clarified further by describing the failure as "grossly negligent, disregarding foreseeable risks and constituting a continuing and systematic failure".*

British Retail Consortium

*The concept of "falling far below what can reasonably be expected of the organisation in the circumstances" is too imprecise and open to a wide range of interpretation. For example, our experience is that the HSE when prosecuting health and safety offences all too commonly seek to argue offences have been aggravated by organisations falling far below the standards even in "run of the mill" cases.*

Beachcroft Wansbroughs

## Statutory Criteria

*The draft Bill set out a number of criteria to help juries decide whether conduct had fallen far below reasonable expectations, pointing to factors that would be particularly relevant and that they must consider.*

This area provoked a great deal of comment. There was little dissent for the proposal to link the consideration of "gross breach" to a failure to comply with the health and safety framework, in particular in helping make clear the standards to be achieved. A common question was how the criteria would operate, in particular whether any or all of the criteria would have to be satisfied and whether if all were satisfied a breach would necessarily be gross. (As drafted, the criteria are not tests to be satisfied by the prosecution, so there is no requirement that any one or all of the criteria need to be proved or indeed that an offence would necessarily be made out if the prosecution evidenced each of them. The are rather matters which jurors are directed to consider when determining whether an organisation's conduct or omissions have been a gross failing, providing a structure for their consideration and building in a benchmark of the current health and safety framework.)

*The EO supports the link between Health and Safety legislation and guidance and the question of a “gross” breach of the duty of care. This link makes the standard to be achieved clear.*

Employers’ Organisation for Local Government

*We recognise that the concept of behaviour falling “far below” is often difficult to define in the abstract, but the essence of the test is applied in respect of dangerous driving and causing death by dangerous driving. Whilst most jurors either as drivers, passengers, or pedestrians are familiar with a standard applicable to road users, and can seek guidance from the Highway Code, they are capable of applying the standard without expert evidence; clearly they may need considerably more help with the standard applicable in a corporate environment, whether factory or shop, train or ship. That assistance is helpfully provided in clauses 3(2) to 3(4).*

Bar Council

There were a number of specific concerns about the proposed link: that the definition might not cover all safety standards, for example food safety standards (particularly with the specific references to the Health and Safety at Work Act 1974); that jurors might find be confused by the different standards of proof for health and safety breaches and the gross breach; that circumstances might exist where a gross breach occurred without a health and safety breach; that any evidence of a breach of health and safety might be considered a gross breach if it caused a death and that organisations would rarely be fully compliant with health and safety legislation.

On the criteria themselves, there was particular concern about the reference to health and safety “guidance”. Several respondents thought that such material could be very wide and its inclusion in this part of the Bill would change its legal status; evidence of risk management would be more appropriate.

*The failure to comply with “any relevant health and safety legislation and guidance” places a legal status on guidance that has never existed before. In most Health and Safety publications, it states that if guidance is followed, this should result in legal compliance. However, alternative methods may also give legal compliance. Including guidance in the definition of gross breach reverses this.*

British Coatings Federation

Some respondents, particularly trade unions and groups representing victims, thought that the inclusion of what senior managers knew or were aware of (or ought to have known or been aware of) focused the offence on questions of individual failings and could reintroduce problems caused by the identification doctrine in the current law. There was also concern that without formalised standards for senior managers’ health and safety responsibilities (such as statutory duties on directors), there would be no measure for what health and safety failings senior managers ought to have known about. Other respondents, from industry, thought that the risks which senior managers were or ought to have been aware of should be narrowed, for example to an obvious and serious risk of death.

*The danger [ ], therefore is clear: having the legal requirement for the jury to consider, and conclude positively, in order to be in a position to convict, that senior managers had, or ought to have had, an awareness of the risk of death, presents an additional evidential burden for the prosecution, and may return the law, to an extent, to the difficulties in finding a guilty “directing mind” that have caused the failure of most criminal prosecutions of companies.*

Disaster Action

Whether or not an organisation sought to profit from a health and safety failure was the most commented on criterion. Many respondents, across the board, thought “profit” would exclude all public sector and not-for-profit organisations and should be removed or replaced by “benefit”. Other common points were that this criterion would be very difficult to prove; that there would be very few instances where an organisation actively sought to profit from a failure and that this factor was not relevant in assessing a gross breach and should be a matter for sentencing,

*We do not believe that any organisation should gain commercial advantage from non-compliance with safety law. However, our experience of companies in general (across a range of sectors) is that deficiencies in safety management are more often by default than by design. That is, various organisations do not deliberately seek to put “profit” before safety but instead, they do not pay enough attention to safety because they are continually looking at other aspects of running the business (in noting this, we do not condone it).*  
Electrical Contractors’ Association

There were mixed views about the “other matters” that jurors should be able to take into account. Some respondents thought that this could mean that they would consider extraneous issues, while others thought that it ought to be more explicit that jurors could consider any other relevant factor and that judges ought to direct them on this specific point.

## **APPLICATION**

### **Corporations, the Crown and unincorporated bodies**

*The draft Bill proposed the offence should apply to corporations, a wide range of Crown bodies but not to unincorporated bodies.*

A general view, across sectors, was that the offence should apply as widely as possible to all employing organisations, whether incorporated or not, including Crown bodies, in the interests of fairness and broadest application of the offence.

Almost all respondents who commented on it welcomed the general lifting of Crown immunity for the offence, with the notable exception of Justice whose view was that the offence should not apply to the public sector, including local government, central government and the police service (although should apply to private companies employed by the Government to perform an “exclusively public function” because the safeguards existing in respect of public bodies do not exist for private companies)<sup>5</sup>. The substantive issue here was the extent to which functions performed by Crown (and other public) bodies were covered or exempt from the Bill (see above). Several trade union respondents also thought that the Bill should be used as a vehicle to remove Crown immunity from health and safety offences.

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<sup>5</sup> In a later submission to the Home Affairs and Work & Pensions Committees, Justice indicated that it did not oppose the extension of the offence to Public bodies, particularly in light of the need to provide an adequate deterrent framework to meet obligations in the European Convention on Human Rights. However, they retained some concerns about this, particularly in terms of making this proposal workable and noted that other methods of holding public authorities accountable were in some ways preferable.

With a small number of exceptions, the majority view was that the offence should extend as far as possible to unincorporated bodies. Many respondents thought that as some unincorporated bodies operate in very similar ways to incorporated bodies that the offence should apply equally to them.

*The extension of the proposals to include Crown bodies (with the exclusion of those carrying out an exclusively public function) is welcomed. There is no reason for such bodies' entitlement to immunity from a piece of legislation relating to workforce matters. In fact, as the indirect employer of nearly six million individuals in the nation's workforce it is only right that such bodies adhere to measures designed to improve accountability.*

Business Services Association

*ACPO accepts the comments contained in paragraph 19 of the Government's March 2005 publication that we, as well as the Crown, should not be exempt where we are in no different position to other employers or organisations – for example, in relation to our role as employer or occupier of buildings.*

Association of Chief Police Officers

*The Draft Bill must be amended so that all employing organisations fall within its scope. This requires*

- (a) the removal of Crown and Parliamentary Immunity in a way which ensures that all Crown bodies including Parliament, government departments, government agencies, the prison service, regulatory agencies and the civil service are liable to prosecution for the offence of manslaughter; and*
- (b) the extension of liability for the offence of manslaughter to unincorporated bodies.*

Transport and General Workers Union

## **Individuals**

The criminal liability of individuals (as opposed to the liability of the organisation itself) attracted a great deal of comment from all sectors. Within industry there was strong support for the decision not to create new sanctions for individuals and to rule out prosecutions against individuals for secondary offences. However, there were also strong responses from many in other sectors who felt that the issue of individual accountability had not been adequately addressed, although some acceptance that a Bill focused on corporate accountability might not be the most appropriate vehicle. Many respondents, particularly from trade unions, thought that statutory duties relating to health and safety management on directors ought to be introduced, but not necessarily in a Bill on corporate manslaughter. Some industry respondents thought that debates about directors' duties, while important, ought to be carried out in the health and safety context.

*The proposed offence will not apply to individual directors or others. This is a retrograde step as it is impossible to divorce the behaviour of an organisation from the behaviour of the decision makers at its head who decides its actions and control its behaviour.*

Simon Jones Memorial Campaign

*... corporate manslaughter legislation must ensure that one or more directors and senior managers could be held individually responsible for workplace deaths if they are found to be responsible for [the] management failings [covered by the offence]. We are therefore seeking an additional offence of unlawful killing, that would open up the possibility of individual responsibility arising from failures in corporate responsibility.*

Amicus

*The TUC believes that the Government must look at the responsibilities of directors with a view to tighter regulation. The TUC wishes to avoid scapegoating of front line employees or*

*middle managers, but it is fundamental that criminal liability for management applies not only to the corporate body or undertaking concerned, but also to owners, directors and very senior personnel who are ultimately responsible for the management failure. Without a clear legal duty on Directors, backed up with appropriate penalties, it is unlikely that the Bill will make any significant cultural change in the safety regimes of organisations. The TUC believes that the Government must introduce legislation on directors' responsibilities, either as part of this Bill or in tandem to it.*

TUC

*We welcome and support the Bill being aimed at corporations and not individuals. Directors and individuals are already subject to existing company and health and safety laws. An individual whose acts or omissions are judged to be sufficiently serious and causative of a death will also potentially be liable for a separate offence under the existing law of gross negligence manslaughter. If there is an intention to place specific health and safety legal duties on directors or to propose innovative penalties these should be the subject of separate debates.*

CBI

## **OTHER ISSUES**

### **Causation**

A small number of respondents commented on causation and thought that this either needed to be addressed or at least could usefully be clarified and the rules set down for the offence. The Law Commission noted the reasons given for not adopting the provision they had recommended (that the common law now effectively dealt with the question of intervening acts) but felt that this still had some value, albeit that this was not a major point.

### **Sanctions**

Trade union respondents and groups representing victims were concerned that fines should be set at high levels, commensurate with the seriousness of the offence. (A number also favoured using this legislation to secure increases in fines for health and safety offences). More generally, there were calls for sentencing guidelines. The Royal Society for the Protection of Accidents felt that improvements in health and safety ought to be capable of being a mitigating factor. There was a widely held view that Crown bodies ought to be liable for fines, despite some possibility of a "recycling" of funds: the level of the fine would send a strong message to the Crown body and the shame would also be significant. This was balanced by a feeling that remedial orders would be more important for these bodies and some concerns that fines might affect the provision of services.

*The GMB would also like to see the courts impose fines that are commensurate with the seriousness of the offence. To be an effective deterrent, one important effect of the Bill should be to send a clear message that this legislation will signal the advent of far larger fines being imposed for a death at work than has previously been the case with prosecutions taken under the 1974 Health and Safety at Work Act.*

GMB

*Fining public services is not an ideal outcome. However, for families the most important outcome is the public statement that serious management failures had occurred resulting in an individual's death. The fine could also be about strengthening accountability in a specific*

*area where failings had been found – for example by accompanying it by remedial orders or granting rebates based on improvements.*  
Independent Police Complaints Commission

There were concerns from some quarters that fines alone would have an insufficient deterrent effect and a number of respondents (including trade union respondents and groups representing victims) felt that additional and innovative penalties needed to be considered such as corporate probation and community service orders, disqualification and possible imprisonment of directors and other individuals, negative publicity orders and equity fines. However, no such proposals were included in the draft Bill and views on this were not therefore properly canvassed. A need to look at corporate sentencing more widely (that is, not just in the context of the corporate manslaughter) was identified by, for example, the TUC. The CBI were also concerned that any such proposals should be subject to separate debate.

*The financial penalties available lack sufficient teeth and therefore fail to act as an effective deterrent or to provide a sufficiently punitive effect. We consider that the proposed legislation does not provide the Court with sufficient and effective powers to ensure that individuals and organisations take responsibility to guard against avoidable and unnecessary loss of life.*

London Criminal Courts Solicitors Association

*NAPO believes that, as a company or public body cannot be sent to prison, it is important that the whole range of community sentences should be available to the courts when sentencing. This would then in addition to fines (which in the case of public bodies would just transfer money from one government department to another) provide courts with the opportunity to include community orders, which could:*

- *Impose obligations and restrictions on the organisation to fulfil the courts' requirements of punishment;*
- *Develop more responsible behaviour in the organisation;*
- *Improve the organisations' knowledge and approach to their duty of care to employees and others affected by their work; and*
- *Include a requirement of unpaid work which would benefit the community.*

National Association of Probation Officers

*We agree with the proposed principal sanction of financial penalties, coupled with a court power to order remedial works to be undertaken. We do not consider alternative sanctions, such as corporate probation, to be necessary. The publicity of a prosecution (even if unsuccessful) will result in significant reputation damage to a defendant organisation and any prosecution is also likely to result on increased regulatory supervision.*

Linklaters

Respondents tended to agree that remedial orders were in principle a positive step. There were, however, reservations that similar provisions under health and safety legislation are rarely used, that courts may not be in possession of sufficient facts to set appropriate orders, and that the time delay between the events and conviction may make the orders redundant. The Institute for Occupational Safety and Health suggested that part of a fine might be suspended subject to remedial action.

## **Extent and jurisdiction**

*The draft Bill proposed that the new offence extend to England and Wales, with separate reviews/consultations in Scotland and Northern Ireland on the position in those jurisdictions. In terms of which cases would be triable, the draft Bill proposed that the offence should have the same territorial jurisdiction for criminal offences that*

*the English courts generally possess and that the injury causing death would need to occur in England and Wales, in territorial waters or on an offshore oil rig or British flagged ship or aircraft.*

Respondents generally felt that the offence should apply as widely and consistently across the UK as possible. A small group of respondents felt that the courts should have the same jurisdiction in respect of deaths abroad as in the cases of individual British subjects committing homicide aboard. Trade union respondents, some health and safety organisations and groups representing victims felt that where a management failure occurred in the UK, causing a death abroad, a prosecution should be possible. Others pointed to the practical difficulties in cases involving incidents overseas.

*The CCA accepts that there are probably insurmountable difficulties to applying corporate manslaughter to situations where both the management failings and harm took place abroad; this would in effect mean that UK health and safety legislation would have to apply outside Britain. However, it is in our view realistic to allow the offence to apply to situations where the management failure took place in Britain and the death took place abroad.*

Centre for Corporate Accountability

*Although leading to lacunae in the application of the law, the IoD recognises the difficulties in extending the territorial extent of the legislation. One area that might be considered for possible extension would be where the employment was normally based in the United Kingdom or where the service was contracted for in England and Wales and subject to English law.*

Institute of Directors

## **Investigation and prosecution**

### Responsible bodies

There was a general consensus that the police were the appropriate investigating authority, that the Health and Safety Executive should be involved to offer their expertise and in any case there should be clarity about the roles of the police, Health and Safety Executive and Crown Prosecution Service. A number of respondents thought that the police should receive specific training for the offence and some police respondents thought that the police would benefit from additional powers for obtaining evidence. A minority view was that investigations themselves might prevent openness about mistakes and encourage cover-ups.

### DPP consent

Opinion on the proposal that proceedings could only be brought with the consent of the Director of Public Prosecutions (affecting, in particular, private prosecutions) was evenly divided between industry respondents (who favoured it) and groups representing victims (who felt that that the cost and difficulty of bring private prosecutions would be sufficient disincentive to unfounded cases and that the restriction would reduce victims' rights). The Centre for Corporate Accountability was also concerned that there could be some conflicts of interest in cases against the Crown.

## Prosecutions for health and safety offences

Some industry respondents felt that guidance was needed about how charges for health and safety offences would be dealt with where corporate manslaughter was also a possibility, but no clear view on whether such charges should be brought in the proceedings or kept separate. (Of two organisations with recent experience of such proceedings – either directly or through a member – Network Rail felt that such charges should be brought together whilst the Association of Train Operating Companies felt that separate proceedings were necessary). Disaster Action thought that on charges for corporate manslaughter, convictions under health and safety legislation should be available as alternative verdicts.

## **REGULATORY IMPACT ASSESSMENT**

*At the same time as publishing the draft Corporate Manslaughter Bill, the Government published a regulatory impact assessment of the proposals<sup>6</sup>. The assessment concluded that any additional costs to industry were likely to be modest, in the form of advice from health and safety experts or lawyers, and some increased expenditure by companies currently paying little attention to health and safety. The draft Bill encouraged further information from respondents about potential effects of the offence.*

On balance, industry respondents agreed with the Government's assessment that there would be little additional cost to those organisations already complying with health and safety, particularly as the offence would be linked to existing health and safety obligations and targeted at the most serious cases<sup>7</sup>.

*We do not anticipate that this proposed new offence would have a substantial impact on the price of relevant insurance products, such as employers' liability insurance, as the financial impact is likely to be minimal across the economy.*

Association of British Insurers

A number agreed with the principle that the offence should be targeted at very serious cases, but were concerned that there would be significant pressure to apply the offence more widely that would be difficult to resist. However, a range of potential costs and impacts were identified. These included: risk aversion; an increase in bureaucracy; difficulty in employing people to take on health and safety responsibilities especially in high risk industries; a possible reduction in inward investment; an increase in investigation and enforcement costs; and lost time and stress for the individuals involved in investigations.

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<sup>6</sup> <http://www.homeoffice.gov.uk/documents/2005-corporate-manslaughter/?version=1>

<sup>7</sup> The Better Regulation Task Force has subsequently commented to the Home Affairs and Work & Pensions Select Committees:

*We are pleased that the Home Office has now produced an RIA and is seeking to minimise regulatory burdens on business by using existing health and safety standards as a benchmark. Whilst it is important that companies and other organisations can be held to account for gross failings by their senior management which have fatal consequences, we must ensure that new legislation does not place unnecessary burdens on business or make them more risk averse.*

A number of industry respondents were sceptical whether the Bill would have any positive impact on health and safety. Trade union respondents felt that the draft Bill would need to be significantly bolstered before it had that effect.

*Recognising that existing health and safety legislation already provides for unlimited financial penalties, the primary additional sanction within these proposals is the ability to stigmatise a company with the label of having committed corporate manslaughter, with its major effect on corporate reputation. There is a danger that those organisations who take their corporate reputation seriously will become risk averse, whilst those with little invested in brand and reputation will remain unchanged by the proposals.*

CBI

*The TUC believes that, while the Bill may help provide a sense of justice to the families of those bereaved as a result of corporate failings, in itself it will do little to reduce the number of fatalities caused by work unless, as part of the bill, or in tandem to it, the Government considers the issue of directors' duties and the penalties available for dealing with Corporate Bodies.*

TUC

**Home Office  
November 2005**

## Annex A

4U Recruitment  
Alarm  
Amicus  
Arriva Trains Wales  
ASDA Stores Ltd  
Association of British Insurers  
Association of Chartered Certified Accountants  
Association of Chief Police Officers (Crime)  
Association of Council Secretaries and Solicitors  
Association of Personal Injury Lawyers  
Association of Principal Fire Officers  
Association of Train Operating Companies  
Balfour Beatty  
Bar Council (Law Reform Committee)  
Beachcroft Wansbroughs  
Bennet, Dr Simon (University of Leicester)  
Bluefinger  
Brake  
British Air Line Pilots Association  
British Coatings Federation  
British Energy  
British Gas, Centrica  
British Ports Association  
British Retail Consortium  
British Rubber Manufacturers' Association  
British Vehicle Rental and Leasing Association  
Business Services Association  
Catalyst 123  
Centre for Corporate Accountability  
Chamber of Shipping  
Chartered Institute for Personnel and Development  
Chiltern Railways  
Clarkson, Prof C M V (University of Leicester)  
CMS Cameron McKenna LLP  
Communication Workers Union  
Communication Workers Union<sup>2</sup>  
Confederation of British Industry  
Confederation of Passenger Transport (UK)  
Construction Confederation  
CORGI  
Cotterill, Roy  
County Surveyors' Society  
Derby Trade Union Education Centre students  
Disaster Action  
Dixon, Alan  
Dudley, Dr Nigel  
Durham Constabulary  
DWF Solicitors  
EEF - The Manufacturers' Organisation  
Effective Health and Safety Management Ltd  
Electrical Contractors' Association  
Elliott, Martin  
Employers Organisation for Local Government  
Energy Networks Association  
Engineering Construction Industry Association  
English Community Care Association  
Ergonomics Society  
Erskine, Robert  
Eurostar  
Eversheds  
Federation of Master Builders  
Fire Brigades Union  
First Great Western  
Food and Drink Federation  
Ford and Warren Solicitors  
Forlin, Gerard  
GB Freight Ltd  
General Counsel 100 Group  
GlaxoSmithKline  
GMB  
GNER  
Graham, Councillor Gordon  
Greenwoods Solicitors  
Guild of Air Pilots and Air Navigators  
Hampshire County Council  
Hartley, Dr H. J (Leeds Met. University)  
Health and Safety Commission  
Heating and Ventilating Contractors' Association  
Howe, Kristy  
Hull Trains  
Hutchings, Norman  
Huxley-Binns, R. and Jefferson, M.<sup>1</sup>  
Independent Police Complaints Commission  
Institute of Directors  
Institute of Electrical Engineers  
Institute of Occupational Safety and Health  
Institution of Civil Engineers  
JRB Risk Identification, Assessment and Control Services  
Justice  
Keoghs  
Local Authorities Coordinators of Regulatory Services  
Law Commission  
Law Society  
Lewy, Lilly  
Linklaters  
Living Streets  
London Criminal Courts Solicitors' Association  
Londonlines  
Lovett, Zerrin  
Maritime and Coastguard Agency/UK Search and Rescue  
McCloskey, Kevin  
Medical Defence Union  
Merseyrail  
Merseyside Fire and Rescue Service

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<sup>1</sup> Nottingham Trent University and University of Sheffield, respectively.

<sup>2</sup> Merseyside and SW Lancs

Midgley, Tim	Seren Group
Midland Mainline	Shire Safety Consultants
National Association of Probation Officers	Shuker, Mike
National Blood Authority	Silber, Mr Justice
National Patient Safety Agency	Simon Jones Memorial Campaign
Network Rail	Solihull Metropolitan Borough Council
NHS Confederation	South East Employers
Northern Rail	South Eastern Trains
Norton Rose	South Tyneside NHS Foundation Trust
Occupational Environmental Health Research Grp <sup>1</sup>	South Wales Police
Oldham Metropolitan Borough Council	Southern Railway
One	Southlands Nursing Home
Parliamentary Advisory Council for Transport Safety	Southwest Trains
Plaut, Simone	Specialist Engineering Contractors Group
Police Federation of England and Wales	Stagecoach
Police Superintendents Association of <sup>2</sup>	Sullivan, Professor G R
Ponsonby, Michael and Martina	Taylor, Bernard
Practical Risk Management Ltd	Thameslink Rail
Prison Reform Trust	Thomas, David
Prospect	Thompsons Solicitors
Public and Commercial Services	Thornley, Roy
Public and Commercial Services <sup>3</sup>	Tiernan, Niall
Public Concern at Work	TransPennine Express
Rail Safety and Standards Board	Transport and General Workers Union
Railway Forum, The	Transport for London
Regional Airports Ltd	TUC
Restorative Justice Consortium	UK Major Ports Group
Risk Frisk	Union of Construction Allied Trades and Technicians
Road Haulage Association	Unison
Roberts, Gary	University of Leeds
Royal Academy of Engineering	Victim Support
Royal Borough of Kensington and Chelsea	Warwickshire County Council
Royal Institution of Chartered Surveyors	Watson, Ian
Royal Mail Group plc	West Coast and CrossCountry Trains Ltd / Virgin
Royal Society for the Prevention of Accidents	White Young Green
Royal Society for the Promotion of Health	Wilson, Bryan
Sandwell Metropolitan Borough Council	Woolf, Lord Chief Justice
Scotrail	Wrightington, Wigan and Leigh NHS Trust
Serco-NedRailways	Zurich Financial Services

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<sup>1</sup> University of Stirling

<sup>2</sup> England and Wales (Crime Committee)

<sup>3</sup> Dept for Work and Pensions Group