

# **CORPORATE MANSLAUGHTER: A REGULATORY IMPACT ASSESSMENT OF THE GOVERNMENT'S DRAFT BILL**

## **INTRODUCTION**

1. This assessment considers the impact of proposals set out by the Government in its draft Corporate Manslaughter Bill<sup>1</sup>.
2. The draft Bill has been published as a basis for further consultation and comment and for pre-legislative scrutiny in Parliament. The Government welcomes responses to the proposals from industry, unions and other interested parties, both on the substance of the proposed reforms and likely costs and benefits. As such, this assessment sets out the Government's consideration to date of the impact of the proposals, but this will be subject to further development in light of the consultation and scrutiny process. Details of how to respond are set out in the draft Bill.

## **OBJECTIVE OF THE PROPOSALS**

3. The proposals are intended to offer a more effective means of holding organisations to account for gross management failings causing death than is currently provided under the law of manslaughter. In practice, it can prove very difficult to prosecute large corporations for gross negligence manslaughter because the law requires proof that a "directing mind" (that is, an individual at the very top of the organisation who can be said to embody its decisions or actions) is themselves guilty of the offence. In broad terms, the proposals would create a variant of this offence specific to organisations. Criminal liability would be attributed where the way an organisation's activities was managed or organised by its senior managers was grossly in breach of a duty of care it owed a person, causing their death.
4. The primary purpose of reform therefore is to offer a more effective sanction against organisations for whom the current law has little effective application. The new offence does not increase or decrease individual responsibility but instead provides a different basis for the criminal liability of organisations, where the focus is no longer on the guilt of a particular individual.

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<sup>1</sup> *Corporate Manslaughter: The Government's Draft Bill for Reform* Available through the Home Office website ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)) or from The Stationery Office.

5. However, a consequence of reform should be a contribution to reducing the rate of work-related deaths and injuries. The proposals do not require any new standards to be met. But a more effective corporate manslaughter offence would provide an incentive for organisations where serious failings exist in the management of health and safety risks to review current arrangements and organise themselves in a way that minimises failings that might cause death. While existing health and safety legislation already provides for an unlimited fine on conviction for certain offences, the prospect under more effective legislation of a manslaughter conviction will provide an additional incentive to comply with appropriate standards.

## **BACKGROUND & RISK ASSESSMENT**

### Current law

6. Liability for manslaughter does not represent a new departure for corporations, who may currently be prosecuted under the law on gross negligence manslaughter. However, liability for this offence is attributed to corporations through the identification principle. This links the guilt of a company to the guilt of a particular senior individual, a “directing mind”, who can be said to embody the company in their decisions and actions. This means that a company cannot be convicted of gross negligence manslaughter unless such an individual is first guilty. This doctrine was developed to avoid the injustice of attributing liability for any individual employee’s crime to the company. However, the result of the identification principle has been that large organisations with complex management structures have proved difficult to prosecute because of the difficulty in identifying an individual who is a “directing mind” in the company and who has acted grossly negligent in a way that led to the death. A more common picture is one of a number of failings by different people, allied to wider corporate failures, which collectively lead to death.
7. As a result, only a small number of successful corporate manslaughter prosecutions have taken place, and these have all been of small companies where the requirements of the current law are in practice easier to satisfy<sup>2</sup>. Public concern at this state of affairs has been reinforced by the lack of success in corporate manslaughter prosecutions following a number of public disasters. Examples of high profile incidents include the Herald of Free Enterprise Ferry disaster in 1987 and the Southall rail disaster in 1997; prosecutions failed in both cases. The

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<sup>2</sup> Since 1992 there have been 34 prosecution cases for work-related manslaughter but only 6 organisations convicted of gross negligence manslaughter. These were Nationwide Heating Services Ltd. in July 2004, Telgarrd Hardwood (UK) Ltd. in February 2003, Dennis Clothier and Sons in October 2002, English Brothers Ltd. in August 2001, Jackson Transport (Ossett) Ltd. in September 1996 and OLL Ltd. in November 1994.

reasons why such proceedings were not successful are complex and the new offence does not mean that each of these cases would necessarily be successfully prosecuted. However, the proposals are designed to make more prosecutions possible.

8. The current law has been subject to substantial criticism<sup>3</sup> and it is clear that it is inadequate to deal with the present day complexities of corporate decision making in large organisations. The objective of the draft Bill is to address this failing and would mean that prosecutions for corporate manslaughter, representing a specific offence of homicide, would be possible in a wider range of circumstances, without the need to identify one individual who themselves has been grossly negligent and caused death. However, the draft Bill has also been carefully drawn up not to increase regulatory burdens on business. It makes explicit that an organisation's culpability is to be assessed in the context of its existing duties under health and safety legislation. It would not therefore impose any new standards and those organisations that already have a conscientious approach to their existing health and safety requirements will not be affected by the new offence. This also means that it would continue to operate in circumstances where companies are already liable to substantial fines for breaches of health and safety legislation.

#### Work-related deaths

9. The UK has a strong health and safety record. Nevertheless, there are unacceptably high levels of work-related deaths each year and the Health and Safety Executive (HSE) considers 70% of these to be preventable. There has been a downward trend in the number and rate of fatal injuries to workers over a number of years, falling to 220 in 1999/00, but the numbers have reached a plateau recently. Some industries are inherently more dangerous than others, such as agriculture and construction, involving regular contact with machinery and appliances. Members of the public are also killed in work-related incidents, for example where scaffolding has collapsed over a public street or in a train crash.

Table: Number of fatal injuries to workers and members of the public as reported to the Health and Safety Executive and Local Authorities<sup>4</sup>

|                | 93/94      | 94/95      | 95/96      | 96/97      | 97/98      |
|----------------|------------|------------|------------|------------|------------|
| Employees      | 245        | 191        | 209        | 207        | 212        |
| Self-employ    | 51         | 81         | 49         | 80         | 62         |
| <b>Workers</b> | <b>296</b> | <b>272</b> | <b>258</b> | <b>287</b> | <b>274</b> |
| Per 100,000    | 1.2        | 1.1        | 1.0        | 1.1        | 1.0        |
| <b>Public</b>  | <b>107</b> | <b>104</b> | <b>86</b>  | <b>115</b> | <b>128</b> |
| <b>Total</b>   | <b>403</b> | <b>376</b> | <b>344</b> | <b>402</b> | <b>402</b> |

<sup>3</sup> See, for example, the Law Commission's 1996 report on involuntary manslaughter (footnote 2).

<sup>4</sup> Figures supplied by the Health and Safety Executive.

|                | 98/99      | 99/00      | 00/01      | 01/02      | 02/03      |
|----------------|------------|------------|------------|------------|------------|
| Employees      | 188        | 162        | 213        | 206        | 182        |
| Self-employ    | 65         | 58         | 79         | 45         | 44         |
| <b>Workers</b> | <b>253</b> | <b>220</b> | <b>292</b> | <b>251</b> | <b>226</b> |
| Per 100,000    | 0.9        | 0.8        | 1.0        | 0.9        | 0.8        |
| <b>Public</b>  | <b>122</b> | <b>162</b> | <b>144</b> | <b>127</b> | <b>136</b> |
| <b>Total</b>   | <b>375</b> | <b>382</b> | <b>436</b> | <b>378</b> | <b>362</b> |

## Reform

10. The need for reform has been on the table for some time. The Law Commission considered the issue of involuntary manslaughter, including corporate manslaughter, and presented their recommendations for reform in 1996<sup>5</sup>. This formed the basis for public consultation by the Home Office, including on a new offence of corporate killing, in May 2000<sup>6</sup> and the Government committed itself to reform in its manifesto in 2001<sup>7</sup>. A survey was subsequently undertaken in September 2002 to assist in the preparation of this regulatory impact assessment. The Home Office sent out questionnaires to a number of organisations and businesses and 84 responses were received.

## OPTIONS FOR REFORM

### Do nothing

11. The Government is clear that there is a pressing need for reform in light of the inability of the current law to apply effectively to large organisations. As a result, it is not fulfilling the objectives of the criminal law in providing justice, punishment or deterrence, and there is a clear public feeling that justice is not being done. Doing nothing would allow this state of affairs to continue. Despite the complex issues that are raised in seeking to reform this area of the law, the need for reform remains strong and the Government is committed to achieving this.
12. In one sense, the option to do nothing costs nothing. However, the cost of work-related deaths, injuries and accidents that result from poor health and safety practices is a large drain on resources for industry, the government, and the taxpayer. The overall cost of an individual losing their life cannot be quantified in an economic way (although there are significant financial consequences for families losing their main wage earner), but figures for the economic cost to industry and the taxpayer of such deaths and injuries appear later in this document. Additionally, as noted above, prosecutions are already currently taken forward under the existing law of gross negligence manslaughter but given that the majority

<sup>5</sup> <http://www.lawcom.gov.uk/files/lc237.pdf>

<sup>6</sup> <http://www.homeoffice.gov.uk/docs/invmans.html>.

<sup>7</sup> Labour Party Manifesto 2001 - p. 33.

of these cases are unsuccessful, the costs incurred at present are a drain on the public purse with little return.

### Legislate

13. The Government has examined a number of models for legislation. Some have been discounted because they offered insufficient certainty: people would not be able to know in what circumstances they would be prosecuted. The Law Commission's proposals offered the most promising model and our offence borrows from it significantly.

### *The Law Commission's recommendations*

14. The Law Commission proposed an offence that applied when a management failure by a corporation was either the cause or one of the causes of a person's death, and that failure constituted conduct falling far below what can reasonably be expected of the corporation in the circumstances. A "management failure" was defined as a failure by a corporation in the way in which its activities are managed or organised that failed to ensure the health and safety of persons employed to carry out those activities or affected by them.
15. A significant difficulty with this proposal was that it was not clear how the offence related to the circumstances in which a duty of care was owed under the common law, particularly in terms of deaths of members of the public associated with a company's activities, or to health and safety duties. The offence was not directly linked to either type of duty, which raised questions about the sort of circumstances in which corporations might be liable. A further issue related to the level of management at which it operated. It potentially made corporations liable for failings at relatively junior levels. The Government's view is that a new offence should target failings that are clearly those of the corporation itself and relate to the overall way in which a particular activity was managed or organised.
16. In essence, while the Law Commission's proposals provided a positive and useful basis for reform of the law of corporate manslaughter, further development was required.

### *The proposed offence*

17. The draft Bill provides that an organisation is guilty of corporate manslaughter where the way an organisation's activities are managed or organised by its senior managers was grossly in breach of a duty of care it owed a person, causing their death. This builds upon key elements of the Law Commission proposal, including the concept that liability rest in *the way a corporation's activities are managed or organised*, although it focuses on failings at a senior management level. It also integrates the

new offence both with common law duties of care owed in respect of particular activities, which set the broad scope of the offence broadly in line with the current law, and with health and safety standards as the benchmark against which a company's culpability is to be assessed. This will give organisations confidence that if they comply with health and safety legislation and the standards it sets, they will not be liable for the new offence.

18. Not every death will give rise to liability to the new offence, even where a health and safety requirement has been breached and a death occurs. For example, the cause of death may lie entirely in the immediate actions of an individual at the scene of death, or be the responsibility of their direct managers, rather than a failure at senior management level (although the two might of course be linked). Nor is the intention to cover circumstances in which efforts have been made to comply with health and safety legislation but the appropriate standards not quite met. However, the fact that the offence would not apply in these circumstances does not mean that there would be no accountability in these cases. In particular, there will be questions of liability for health and safety offences on the part of the corporation and potential individual liability either for gross negligence manslaughter or health and safety offences. The offence is aimed at the worst cases of corporate negligence.
19. The proposals therefore reflect a proportionate approach. They seek to facilitate prosecutions of organisations that have caused death by senior management failings that constitute gross negligence. They do not seek to make every breach of a company's common law and statutory duties to ensure health and safety, liable for prosecution. Our objective remains to prosecute circumstances where gross management failings at a senior level of an organisation have led to death but which are currently beyond the reach of the current law because a directing mind of a company has not themselves been grossly negligent.

## **BENEFITS AND COSTS**

20. The proposals do not in any way change the regulatory requirements placed on organisations or individuals and consequently do not impose any new compliance burdens on organisations. The proposals include statutory criteria for assessing an organisation's culpability that are explicitly linked to health and safety legislation and guidance. This ensures that the link between the two, and the fact that no new standards are involved, is beyond doubt. The only compliance costs therefore arising from the Bill will be those affecting employers and others who do not already have adequate health and safety management arrangements in place, who may be encouraged to rethink their approach to existing legislation.

21. This is important. Estimates of the costs and benefits of new or amended health and safety regulations assume full compliance with the law. Any extra cost to achieve compliance as a result of the Bill is therefore already factored into earlier regulatory impact assessments undertaken by the Health and Safety Executive. The anticipated additional deterrent effect of the new offence will be a further step in encouraging this full compliance, and in maximising the benefits to be gained from existing health and safety requirements.

### Benefits

22. The proposal contains both direct benefits deriving from changes in work practices and indirect benefits that cannot be precisely quantified. Implications are considered on an economic, social and environmental basis.

### *Economic impact*

23. Most directly, a more effective corporate manslaughter law that does not rely on a restrictive identification principle may encourage guilty pleas in cases where there are currently trials. At present, it is arguable that companies facing prosecution, aware of the difficulties inherent in securing a conviction, are more likely than not to contest manslaughter charges irrespective of their culpability. The proposals would enable organisations to judge more clearly whether they are guilty or not at an early stage, saving the costs of a trial for the court, CPS and themselves.
24. More widely, while not all workplace accidents can be prevented by better compliance with health and safety, even if only a small percentage of these are prevented in this way, this has the potential to save many millions of pounds in the cost to society of work-related accidents. In 2001/02, the cost to the UK of work-related injuries and accidents was estimated at between £20 billion and £31.8 billion a year. This figure is made up of a cost to individuals of £10.1 to £14.7 billion, a cost to companies of £3.9 to £7.8 billion and a cost to the state of £6.9 to £9.6 billion<sup>8</sup>. Companies lose money even through accidents that do not cause death or physical injury, simply because of damage, production loss or delay occasioned. However, both injury and non-injury accidents are generally caused by the same failures to control health and safety risks and addressing these would lead to reductions in *all* potential costs.

### *Social impact*

25. There is widespread concern that insufficient redress is possible under the current criminal law and that the criminal justice system is failing to

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<sup>8</sup> Health & Safety Executive.

hold large organisations properly to account for very significant management failings leading to death. A more effective corporate manslaughter offence will help to secure justice for victims' families and provide a criminal justice system in which the public have confidence.

26. Social benefits are also likely to be felt in terms of improved safety. In the small but significant number of cases where deaths are linked with failings at senior management levels, the availability of an effective sanction should have a salutary effect on the company concerned and ensure that it addresses the failings identified, resulting in fewer deaths occurring. It is difficult to quantify these benefits, but increased focus, knowledge and awareness of health and safety requirements will reduce the level of all work-related deaths, injuries and accidents - improving conditions for workers. The proposals do not require corporations to comply with any new regulatory standards, but the extra deterrent effect of a more effective corporate manslaughter offence will promote sensible health and safety management and improve standards where these have been seriously neglected.

#### *Environmental impact*

27. No specific impact is anticipated here.

#### Costs

28. In summary, we expect additional costs to industry to be modest, as no new regulatory burdens are imposed. The assessment set out below is based largely on responses to a questionnaire sent out by the Home Office in 2002 to a range of industries, individuals and unions in industrial sectors that have recently had a larger than average number of deaths and serious injuries<sup>9</sup>. Although the proposals in the draft Bill have been developed since the survey was conducted, the responses and figures still have some currency. We will continue to develop the assessment of potential costs to industry in the light of responses during the scrutiny process.
29. Clarity that the offence will operate at a high threshold and in respect of overall corporate failures, and a clear link with existing standards, have met a number of concerns expressed by business and industry in the past. Costs are considered on an economic, social and environmental basis. Potential costs to the public sector are considered separately.

#### *Direct economic impact*

30. A number of what might broadly be termed "legal" costs were identified by respondents. These included training and familiarisation, which were

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<sup>9</sup> Figures drawn from the responses appear in the conclusion below and in the annex.

generally viewed as minimal within the context of the overall training budget. Costs related to the investigation of the new offence and possibly defending legal proceedings were also identified under this head. In practice, costs of this nature already have the potential to arise for companies: work-related deaths are currently subject to investigation with a view to potential criminal proceedings and prosecutions for gross negligence manslaughter or health and safety offences are possible. The proposals are estimated to lead to 5 additional prosecutions.

31. Some respondents raised the issue of enhanced compliance with existing health and safety legislation as a possible cost. Whilst this might be the case, the Health and Safety Executive already account for full compliance when calculating the potential cost of new or amended health and safety requirements. Taking the cost of such compliance into consideration again here would amount to double accounting. Nonetheless, for illustrative purposes, costs that might be incurred by industry as a result of the new offence have been calculated on the basis of the figures supplied by respondents. These need to be weighed against consequential benefits derived from improved health and safety compliance.
32. The possibility of employing extra staff as a result of the proposals was raised but the fact that no new compliance burdens are imposed makes this questionable. While organisations may want to take advice on how to raise their health and safety standards, and costs could be associated with this, the proposals are clearly linked to existing duties for ensuring health and safety, for which staff and procedures should already be in place. The same is true in respect of new equipment (where 5 respondents thought that costs (not specified) might be incurred). If additional equipment is required to comply with existing health and safety duties, this should already be in use.
33. The possibility of extra insurance costs was also raised. However, the proposal itself would not create the need for additional insurance cover. Indeed, it is not possible to insure against financial penalties resulting from criminal offences. On the other hand, organisations that have good health and safety records may end up paying lower premiums than their counterparts.

#### *Indirect economic impact*

34. Three areas of potential indirect cost were identified: risk averse behaviour, the negative impact on corporate reputations of proceedings and conviction and problems with recruitment. The Government does not wish to introduce legislation that will lead to an increase in regulatory burdens or stifle entrepreneurial activity. On the other hand, the fear that taking unwarranted risks might lead to conviction, and consequent damage to reputation are, of course, significant factors for securing

compliance with health and safety requirements, and an offence with no practical bite would fail to deliver this objective. Accordingly, the proposals are carefully targeted at the worst cases of corporate negligence. This seeks to balance a more effective sanction of corporate manslaughter, prompting organisations paying little or no proper regard to health and safety to take action, with ensuring that responsible organisations are not within the ambit of the offence. Figures for potential direct costs indicate that risk aversion is unlikely to be a significant issue.

35. Some respondents said that the prospect of prosecution could be a deterrent from taking on positions of responsibility and could affect recruitment. But almost the same number thought this would not be the case. The proposals are specifically targeted at corporate liability and will result in prosecutions against organisations themselves rather than individuals, to whom the new offence would not apply. Accordingly, there is no *additional* risk of individuals being prosecuted, although proceedings against individuals might be appropriate for existing offences if they are sufficiently personally to blame. Arguments that senior managers will either be discouraged from taking these posts or demand higher salaries based on increased risk are not therefore considered to be substantiated.

#### *Social and environmental*

36. Respondents were strongly in favour of changing the law and no particular social costs were identified. Nor do we anticipate any negative environmental impact from the proposals.

#### *Public sector*

37. We do not anticipate significant additional costs to the public sector:

#### **Health and Safety Executive**

HSE already investigate work-related deaths where there are potential breaches of health and safety. A protocol for liaison with the police exists which recommends joint working where there are concurrent health and safety and manslaughter investigations. HSE are not the primary investigators or prosecuting authority for the current or proposed offence and the proposals will not therefore affect them directly. HSE estimate an average investigation cost of £43k for each workplace fatality, of which the manslaughter aspects of the investigation are estimated to cost between £25k and £35k; these costs are not expected to change.

## **Police**

We do not anticipate any significant increase in the number of investigations into work-related death for the police. Rather, the offence is likely to facilitate new prosecutions on the basis of evidence that would currently be gathered. Some deaths related to Crown bodies may give rise to an investigation for the offence beyond issues of individual liability, which would currently be the case. But our assessment of the implications of the offence for Crown bodies indicates that there are likely to be few such investigations.

Some investigations may need to be fuller in the future than is currently the case, although cases that are most resource intensive, involving major public incidents, are already subject to full investigation. We shall be continuing to discuss this with the police during the scrutiny process. The proposals do not in themselves affect the operation of the current protocol for liaison between enforcement bodies involved in investigating and prosecuting work-related deaths.

We would expect training related to the new offence to be absorbed within current training programmes.

## **Crown Prosecution Service (CPS)**

The offence is intended to be reserved for relatively few and very serious cases, and our proposals build on the scope and high threshold of the current law, requiring a duty of care to be owed and a gross management failure for liability. We therefore do not anticipate a large increase of entirely new cases being referred to the CPS to consider, although there are likely to be some, particularly in the early years, whilst the new offence beds in. Referrals are also expected of cases involving Crown bodies that would not currently arise as such bodies are not currently subject to prosecution (although our assessment of the implications of the offence for the Crown indicates that there are likely to be few such cases - discussed more fully below). We consider a reasonable estimate overall to be an increase of 15 extra referrals a year, representing some 5% of reported work-related deaths. Initial estimates are that this might amount to £450K for the CPS.

In terms of prosecutions, we estimate that the proposals would lead to a possible 5 extra prosecutions per year. Based on the average cost of a corporate manslaughter prosecution, this would amount to some £650K for the CPS (some of which, in the form of review costs is likely to be currently incurred as additional prosecutions are most likely to be brought in cases currently sent to the CPS to consider under the current law). Clearly, some corporate manslaughter prosecutions, such as those arising out of major public incidents, can be lengthy and complex and involve higher costs. However, by their very nature such cases do not arise every year. Moreover, the cost of reviewing these cases already

arises for the CPS, and indeed in many cases to date prosecution costs have been incurred as well.

Against these costs, a clearer basis for prosecuting corporate manslaughter has the potential to yield prosecution savings by providing a clear and wider basis for attributing serious senior management failings to organizations that does not rely on individual gross negligence. It is also worth recognising that any prosecution will not be an entirely new prosecution, as health and safety charges are likely to have been brought even if proceedings for manslaughter are not currently pursued. Additional prosecution costs therefore need to be seen in the context of savings in not bringing those current proceedings.

### **The courts**

The anticipated 5 additional prosecutions are not (as explained above) expected to be new prosecutions for the court system. Court costs are calculated to be £3,305<sup>10</sup> per day. Five trials, each lasting an average of five days, would cost some £83k but only a proportion of this is likely to represent additional costs (that is, costs over and above the cost of current proceedings). Cases relating to serious public incidents are likely to involve longer trials. However, as prosecutions are frequently already brought in such cases (either in respect of health and safety offences or under current manslaughter laws), specific additional costs have not been identified over and above those set out above. As the offence does not apply to individuals, custody time limits (which can restrict court timetables) will not be applicable.

#### *Crown bodies*

38. The draft Bill applies the new offence to a range of Government departments and other Crown bodies. At present, under the principle of Crown immunity, the Crown cannot be prosecuted for gross negligence manslaughter. However, the Government recognises the importance of such bodies being clearly accountable for management failures that lead to death. The draft Bill therefore applies the offence to the Crown, and sets out a mechanism for bringing prosecutions against Crown bodies, except where there is good reason for not doing so.
39. However, there are important differences between public bodies and bodies in the private sector and the proposals apply in a way that reflects this. In particular, an offence of corporate manslaughter is not an appropriate way of holding the Government or public bodies to account for matters of public policy or uniquely public functions. Accountability for these must be able to fully explore and debate the wider public policy issues involved. Accordingly, the offence applies to a wide range of

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<sup>10</sup> Department for Constitutional Affairs.

activities pursued by companies and other corporate bodies, whether performed by commercial organisations or Crown or other public bodies. But other types activity that are peculiarly an aspect of government, for example, decisions about regulatory standards or statutory inspection are not covered by the offence (for which duties of care are unlikely to be owed in any event). The proposals also make specific provision to exclude certain other “exclusively public functions”. This is not confined to Crown or other public bodies but also excludes any organisation (public or otherwise) performing a particular type of function.

40. This does not affect questions of individual liability, and prosecutions for gross negligence manslaughter and other offences will remain possible against individuals performing these functions who are themselves culpable. However, organisational failings in areas of uniquely public functions are more appropriately matters for other forms of public and democratic accountability, such as Parliamentary or local government accountability, select committees and public inquiries, rather than the criminal law.
41. In summary, the proposal to apply the offence to Government Departments and other Crown bodies will bring significant benefit in ensuring that these organisations too can be held to account where appropriate for corporate manslaughter. The effect of the proposals is to create a broad level playing field between public and private sectors. Both are treated in the same way in their roles as employers and occupiers of premises and when providing goods and services or operating commercially. But the offence does not apply to activities that the private sector either does not do, or cannot do without particular lawful authority, which are areas more appropriately subject to other lines of accountability.
42. Criminal accountability for Crown bodies as such is largely uncharted territory and we shall be developing this aspect of the assessment in further consultation with Government Departments during the consultation and scrutiny process. It is not, however, envisaged that there will be a large financial implication for Government Departments. Departments are already accountable for the standards they operate to through a variety of mechanisms involving public scrutiny and censure. These include through the civil law as well as judicial review, the Health and Safety Executive, independent investigations, public inquiries, Ministers in Parliament and Parliamentary Select Committees.
43. The new offence is intended to complement these, ensuring parity, as far as possible under the criminal law with other organisations, whilst recognising that the Crown and other public authorities are in a different position in carrying out certain functions. However, the existence of such mechanisms indicate that Departments must already be paying close attention to their obligations and responsibilities in terms of public safety

and the impact of the new offence must be assessed in that context. In particular, the offence creates no new regulatory requirements, being based on the common law duty of care, and is closely linked to health and safety duties with which Crown bodies must already comply. On the latter, in the last six years, HSE have only censured Crown bodies 4 times in relation to deaths. While this does not reflect every death that has been or might be investigated, it provides an indication of the type of case that is likely to have been prosecuted under that legislation had it not been for Crown immunity. The test for the new offence is of course not identical to this, and indeed will operate at a much higher threshold, but the figures serve as a useful guide to potential impact.

44. As Crown bodies are not currently subject to prosecution for gross negligence manslaughter, they will potentially be subject to a police investigation (with consequent disruption and potential costs) that would not currently occur. However, the additional burden here needs to be seen in context. Many deaths closely connected with Government bodies are already subject to independent investigation in light of obligations under Article 2 of the European Convention on Human Rights. Investigation into such fatalities invariably includes police involvement, particularly to establish whether other offences might have taken place. We shall be considering potential costs to Crown bodies further during the consultation and scrutiny process.

## **EQUITY AND FAIRNESS**

45. A more effective offence of corporate manslaughter will secure justice for victims' families in a wider range of cases than at present. In terms of corporate bodies themselves, changing the way corporate manslaughter applies to corporations in the way proposed will ensure that criminal liability applies in a more even-handed way between large and small companies. The application of the offence to the Crown ensures an equality of treatment under the offence regardless of status.
46. The provisions of the Race Relations (Amendment) Act have been considered. We do not anticipate that any particular racial group will be more or less adversely affected by the proposals: the proposals target the liability of corporations rather than individuals and will target all companies and other corporate bodies.

## **SMALL BUSINESS IMPACT TEST**

47. Currently, where prosecutions for corporate manslaughter do occur and are successful, they are usually against small businesses whose management structures are clear. This makes it easier to identify management responsibility and a "directing mind" of the company to

whom responsibility for the death can be traced. By making it easier to recognise the liability of *all* organisations who cause death through gross negligence, our proposals will level the playing field between small organisations against whom the present law is currently effective and larger organisations where successful prosecutions are currently difficult to achieve.

## **COMPETITION ASSESSMENT**

48. By ensuring that criminal liability for manslaughter applies in a more even-handed way between large and small companies, the reforms will help reduce any competitive advantage enjoyed by less responsible competitors simply because of their size.

## **ENFORCEMENT AND SANCTIONS**

49. It is for the police to investigate criminal offences under the general criminal law, and for the CPS to prosecute. It is important that the knowledge and expertise of the police and regulatory enforcing authorities such as the HSE are properly harnessed in any corporate manslaughter investigation and protocols exist to facilitate this. The Government will continue to keep the effectiveness of these arrangements under review.
50. The new offence is targeted at corporations and other organisations and does not apply to individuals. As such, the sanction upon conviction will be an unlimited fine. (A range of sanctions, including imprisonment, is available against any individuals convicted on a personal basis in respect of the death. Any such prosecution would be for an offence for which the individual would already be liable. These include gross negligence manslaughter and health and safety offences). Courts will also have the power to impose a remedial order, requiring the organisation to address the cause of the fatal injury. These are not currently available when companies are convicted of manslaughter, but can be imposed under health and safety legislation.

## **MONITORING AND REVIEW**

51. We would propose to review the application of the offence three years after the legislation enters into force. The CPS will record the number of corporate manslaughter cases referred to it and the number of successful prosecutions. The Health and Safety Commission and its Executive will continue to monitor progress towards Government targets to reduce work-related injury and death.

## **CONSULTATION**

52. In 2000, the Government consulted on proposals to reform the law of involuntary manslaughter, including corporate manslaughter. Respondents did not raise cost as a specific issue. A summary of the responses is published separately. Overall, these showed strong support for reform.
53. In September 2002, a survey was undertaken to assist in the preparation of this regulatory impact assessment. Although the proposals have since been developed, the responses have proved helpful in developing the proposals and assessing their potential impact. Responses were received from business, trade unions and industry associations.
54. The Home Office has consulted closely with other Departments and other relevant bodies in developing proposals, including HSE.

## **SUMMARY**

55. The Government is strongly committed to reforming the law. The proposals set out in the draft Bill do not impose any new regulatory burdens on industry or the public sector, and our assessment is that any additional costs would be modest. On the other hand, the new offence would improve the prospects for securing justice where deaths are caused by gross negligence in the strategic management of organisations.
56. As this regulatory impact assessment relates to draft proposals that are the subject of consultation and scrutiny, we shall continue to develop this assessment in the light of responses made during that process. Our calculations to date show that, while it is not possible to quantify the benefits of the proposals in every instance, they significantly outweigh the potential costs. In overall terms, the costs identified with the new offence amount to less than 0.1% of the costs of work-related injury, so even a very small reduction in work-related deaths and injury would allow costs to be fully met.

Table of estimated costs of the new offence<sup>11</sup> compared with costs associated with work-related injuries including fatal accidents<sup>12</sup>.

| <b>COST OF NEW OFFENCE</b>  | <b>COST OF WORK-RELATED ACCIDENTS</b>   |
|---|---|
| <p><b>Cost to industry</b></p> <ul style="list-style-type: none"> <li>• <b>£2.5m:</b> defending prosecutions</li> <li>• <b>£6m:</b> legal advice on new proposals</li> <li>• <b>£6m:</b> additional training costs</li> </ul> | <p><b>Cost to industry</b></p> <ul style="list-style-type: none"> <li>• £3.9 - £24.2bn</li> </ul> <p><b>Cost to state</b></p> <ul style="list-style-type: none"> <li>• £6.9 - £9.6bn</li> </ul> |
| <p><b>Cost of prosecuting new offence</b></p> <p>£83k courts<sup>13</sup><br/>£1.1m CPS</p>   | <p><b>Cost to individuals</b></p> <ul style="list-style-type: none"> <li>• £10. - £14.7bn</li> </ul>  |
| <b>TOTAL</b>  | <b>TOTAL</b>  |
| <p><b>£14.5m (industry)</b><br/><b>£15.7m (industry and prosecution)</b></p>  | <p><b>£20-£31.8bn</b><br/><b>£200-£318m saved on a 1% reduction</b></p>   |

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<sup>11</sup> An explanation of these calculations appears in the annex.

<sup>12</sup> See paragraph 24.

<sup>13</sup> Although only a proportion of these will be new costs – see paragraph 37 **The courts**.

### COSTS IDENTIFIED

- i. A breakdown of the responses to the Home Office's 2002 questionnaire appears below. The questionnaire was sent to a range of businesses and organisations, broadly falling into industrial sectors that have had a larger than average number of deaths or serious injuries. These sectors account for some 20% of all companies. 84 responses were received.
- ii. The nature of organisations to which the questionnaire was sent are likely to ones where the impact of the offence might be felt most. However, respondents extended beyond sectors that are considered high-risk in terms of fatalities and a certain amount of caution should therefore be exercised. A broad extrapolation was made from the proportion of respondents raising particular cost issues to the proportion of businesses within these sectors who might experience similar costs. This allowed for a very broad estimate to be made on what was a small survey, though some respondents nonetheless represented a wider pool of industry.
- iii. While almost a quarter of respondents thought that there would be no additional costs for industry as a result of our proposals, potential costs have been calculated on the basis of the figures provided and educated assumptions.
- iv. **Staff training costs** to industry could increase by £6m. This is likely to be minimal within the cost of overall training expenditure, averaging £500 per organisation, to ensure that senior management are aware of the existence and content of the new legislation. **Costs for legal advice and consultant's fees** are calculated at another £6m, again with the average amount spent again being £500. Free advice is available from HSE and most responsible organisations will use this option as a matter of preference, with legal advice taken if there are particular fears based on past experience. Accordingly the average legal cost should certainly be towards the lower range of figures suggested.
- v. **The costs of defending an extra five prosecutions** are estimated in line with the higher figures provided by respondents: an average of £500k per case, giving a total of £2.5m. More respondents estimated a figure falling far short of this.
- iv. The survey itself asked respondents to identify potential costs relating to legal advice, insurance and training. The information below summarises the views of respondents.

## **No or marginal costs – 21**

- One wrote that there would possibly be small insurance & training costs
- One thought there might be minor legal and training costs, under £100,000
- One thought they might need some awareness training,
- One identified “minor” changes to H&S and training

## **Increased costs associated with compliance – 10**

- 4 commented that businesses will react disproportionately
- One said a review of H&S would have to be done
- One said proof of compliance would have to be improved to the criminal standards of proof [already the case]
- One wrote consultants might be needed at a cost of up to £2000 with an increased number of audits.

## **Increased legal costs**

### *Advice as to implications of new offence and on compliance – 16*

- One estimate at £100
- One said ‘high’
- One estimate £25,000
- One estimated £500

### *Investigating and defending new charges of corporate killing – 15*

- 4 estimated £1-2m per case
- One estimated £10,000-£200,000 per case
- One said “millions”
- One pointed out that even a successful defence is costly
- One said “significant”

## **Increased insurance costs – 22**

- 3 said insurance costs would “possibly” increase
- One thought that following a claim for damages insurance premiums would go up by 15%
- 4 indicated that insurers frequently meet the cost of investigations so premiums on “insurance against litigation” would increase.
- Two said insurers would demand better systems which would cost more
- One said insurance would only go up if there was a case

### **Increased training costs – 13**

- One estimated £8.4m for a large number of managers and £840,000 yearly thereafter
- One estimated £1-2000
- One estimated £1500
- One estimate at £500
- One said “minor” training costs

### **Other costs mentioned by respondents**

- Commercial losses following charges
- Internal management costs
- Costs of recruiting staff with right skills and increased salaries for those with responsibility for health and safety
- Reporting systems would have to be improved (cost at a few thousand pound)
- Unspecified staffing and equipment costs
- Unspecified changes in working practices
- Overuse of new offence would lead to adjustment in the margins priced into investment