

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE: A REGULATORY IMPACT ASSESSMENT OF THE GOVERNMENT'S BILL

INTRODUCTION

1. This assessment considers the impact of proposals set out in the Government's Corporate Manslaughter and Corporate Homicide Bill.
2. 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 England and Wales and Northern Ireland and culpable homicide in Scotland¹. In practice, it can prove very difficult to prosecute large corporations for gross negligence manslaughter/culpable homicide 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 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 the organisation's activities were managed or organised by its senior managers was grossly in breach of a duty of care it owed a person, causing their death.
3. 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.
4. 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 of a manslaughter conviction under more effective legislation will provide an additional incentive to comply with appropriate standards.
5. This assessment sets out the background to the Bill, the options for reform and the likely costs and benefits to potential defendants, enforcing authorities and society as a whole, in the context of improving health and safety in the workplace.

¹ The Corporate Manslaughter and Corporate Homicide Bill introduces a new offence of corporate manslaughter (for England and Wales and Northern Ireland) and a new offence of corporate homicide (for Scotland). For the remainder of this assessment, the term "corporate manslaughter" should be read to include corporate homicide.

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 satisfy². 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, the Southall rail disaster in 1997 and the gas explosion at Larkhall in 1999; prosecutions failed in those cases. The 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 ensure prosecutions do not fail on the basis that no guilty directing mind could be identified.
8. The current law has been subject to substantial criticism³ 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 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 Bill has also been carefully drawn up not to increase regulatory burdens on

² Since 1992 7 organisations have been convicted of gross negligence manslaughter. These were Keymark Service (2004), 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.

³ See, for example, the Law Commission's 1996 report on involuntary manslaughter

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 the new offence would 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 2004/5 (see table below), but the numbers have reached a plateau recently. Some industries, such as agriculture and construction, are inherently more dangerous than others 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 Authorities⁴

	00/01	01/02	02/03	03/04	04/05(p)
Employees	213	206	183	168	169
Self-employ	79	45	44	68	51
Workers	292	251	227	236	220
Per 100,000	1.0	0.9	0.8	0.8	0.7
Public	144	127	139	131	117
Total	436	378	366	367	337

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 1996⁵. This formed the basis for public consultation by the Home Office, including on a new offence of corporate killing, in May 2000⁶ and the Government committed itself to reform in its manifesto in 2001⁷. A survey was 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. The Home Office also welcomed comments on the potential impact of the proposed offence in response to the publication of the draft Bill in 2005.

⁴ Figures supplied by the Health and Safety Executive.

⁵ Legislating the Criminal Code: Involuntary Manslaughter, Law Com No 237

⁶ <http://www.homeoffice.gov.uk/documents/2005-corporate-manslaughter/>

⁷ Labour Party Manifesto 2001 - p. 33. The Labour Party Manifesto in 2005 confirmed the commitment to legislate in this area.

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.
13. Additionally, as noted above, prosecutions are already currently taken forward under the existing law of gross negligence manslaughter but given that the majority of these cases are unsuccessful, the costs incurred at present are a drain on the public purse with little return.

Legislate

14. 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

15. 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.
16. 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.

17. 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

18. The Bill provides that an organisation is guilty of corporate manslaughter if the way in which the organisation's activities are managed or organised by its senior managers was grossly in breach of a duty of care it owed a person, and caused their death. The "management failure" test has been qualified to apply to the organisation or management of activities *by senior managers*. This qualification puts on the face of the Bill the policy that the failures cannot be at a solely low level but must be ones that properly can be described as "corporate".
19. The Bill 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.
20. 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 truly organisational failings. 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.
21. The proposals therefore reflect a proportionate approach. They seek to facilitate prosecutions of organisations that have caused death by management failings attributable to a senior level 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 in circumstances where gross management failings in 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

22. 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 require the jury to consider the extent of health and safety breaches in determining whether the organisation had been grossly negligent so that the standard is explicitly linked to health and safety legislation. 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.
23. 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.
24. In particular, as the offence is targeted at the worst types of disregard for health and safety law this offence should be an additional incentive for such offenders to improve health and safety management.
25. An estimate has been made of the likely number of prosecutions under the new offence, in order to make some assessments of the likely costs. It is estimated that there will be between 10 – 13 additional prosecutions a year, this would be around 3 – 4 per cent of recorded work related-deaths.
26. This is a revised figure since the regulatory impact assessment in 2005 and takes into account changes to the Bill. In particular the extension of the Bill to Scotland and Northern Ireland accounts for 2 – 3 additional cases a year. It also gives a wider range of the possible increase to reflect the necessarily inexact basis on which the estimates can be arrived at.

Benefits

27. 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

28. 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, prosecution authority and themselves.

29. In addition cases which do proceed to criminal trial on the current basis often fail. This can have very large costs associated with it, including the costs of both prosecuting and defending cases and the costs of the court time. Under the proposals there would be less uncertainty about how the law operates and it would be easier for prosecuting authorities to judge whether a case would be likely to succeed or fail. This would therefore save costs of some trials which are unsuccessful and where cases are successful the guilty parties will pay these costs.
30. 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 Great Britain of workplace accidents and ill-health 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 billion⁸. 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

31. There is widespread concern that insufficient redress is possible under the current criminal law and that the criminal justice system is failing to 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.
32. 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 gross failings in the overall management of safety, the availability of an effective sanction should have a salutary effect on the company concerned and ensure that it addresses the failings identified. Companies whose standards of safety management fall far below those that could be expected will also have additional incentives to improve health and safety management.

⁸ Health & Safety Executive.

33. 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. While the proposals do not require corporations to comply with any new regulatory standards, 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

34. No specific impact is anticipated here.

Costs

35. 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 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 injuries⁹. It is also based on responses to the Government's draft corporate manslaughter Bill which was published alongside a regulatory impact assessment for the draft Bill in March 2005. Responses were welcomed on further information about costs, and many responses were received about the likely impact of the proposed offence.
36. On balance, industry respondents agreed with the Government's assessment in March 2005 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.
37. Costs are considered on an economic, social and environmental basis. Potential costs to the public sector are considered separately, in terms of costs as potential defendants and also costs as enforcers.

Direct economic impact

38. A number of what might broadly be termed "legal" costs were identified by respondents. These included training and familiarisation, which were 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. It is estimated that the number of cases brought where at present there is neither a prosecution for manslaughter nor for breaches of health and safety laws will be very low indeed and is likely to

⁹ Figures drawn from the responses appear in the conclusion below and in the annex.

be restricted to areas which currently benefit from Crown immunity. Even in these cases costs currently may be incurred by Crown bodies through public inquiries, extended coroner inquests and Fatal Accident Inquiries.

39. 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. These need to be weighed against consequential benefits derived from improved health and safety compliance.
40. 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.
41. The possibility of extra insurance costs was also raised in the 2002 responses. However, it is not possible to insure against financial penalties resulting from criminal offences so there will not be direct insurance costs associated with penalties arising from the offence. Any increase in premium is likely to be low given that cases which may become corporate manslaughter cases in future are currently prosecuted under health and safety law. This analysis was supported in the response to the 2005 consultation from the Association of British Insurers which said it did not anticipate the proposed offence having a substantial impact on the price of other relevant insurance products, such as employers' liability insurance, as the financial impact was likely to be minimal across the economy. On the other hand organisations that improve their health and safety standards may end up reducing their insurance costs.

Indirect economic impact

42. Three areas of potential indirect cost were identified: risk averse behaviour, the negative impact on corporate reputations resulting from 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.

43. The Government considers that the potential for risk aversion is linked to a clear understanding of the Bill. As a result the Government has been working closely with industry bodies to ensure that the proposals are properly understood. Responses to the 2005 consultation show that many industry bodies now agree that the offence should not increase costs for organisations with proper health and safety standards. In addition, the Government will continue to promote understanding of the Bill leading up to implementation. Figures for potential direct costs indicate that risk aversion is unlikely to be a significant issue.
44. 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

45. 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 – as potential defendants

46. The current law applies to large parts of the public sector, including NHS bodies, local authorities, local education authorities and other incorporated public bodies. The new offence will also apply to these bodies. A number of bodies representing these groups responded to the 2005 consultation. The potential costs identified were exclusively concerned with risk aversion and increased costs for those organisations which are not in compliance with health and safety law. However, the same logic applies to the public sector as the private sector (see above) and the Government considers that the balanced approach in the Bill coupled with greater understanding of the proposals should not lead to risk aversion in practice.
47. The new offence will also apply 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 senior management failures that lead to death. The 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.

48. 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 broadly level playing field between public and private sectors.
49. It is not 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, and parliamentary accountability.
50. 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. Although it is intended to complement other forms of accountability, it is possible that alternative forms of accountability will play smaller roles if a full corporate manslaughter investigation has taken place.
51. 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. On that basis we would expect fewer than 1 prosecution a year arising in areas currently enjoying Crown immunity.
52. As Crown bodies are not currently subject to prosecution for gross negligence manslaughter, they will potentially be subject to investigations and prosecutions (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 by individuals.

53. The Crown would also face defence costs were any prosecutions to be brought against the Crown that it would not currently face. It is anticipated that these would be no more than the costs estimated for the private sector (an average of £500k per case) and could be less. But a very serious and high profile case could cost considerably more. These are the sorts of case, however, which prompt public inquiries currently, which are themselves very costly: a substantial public inquiry would be likely to cost several million pounds.

Enforcement costs

54. We do not anticipate significant additional costs to the public sector resulting from enforcement.

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.

We expect the majority of new corporate manslaughter cases are ones which would currently be prosecuted by HSE and would be brought by the prosecution service in future. Although there would be a consequential saving for the HSE this would be met by the prosecution services.

Local Authorities

Local authorities also investigate work-related deaths and are bound by the same protocol as the HSE. Similarly local authorities will not be the primary investigators or prosecuting authority for corporate manslaughter cases. Investigation costs in local authorities, as in the HSE, are not expected to change as a result of the new offence.

Police

We do not anticipate any significant increase in the number of investigations into work-related deaths for the police. In many cases, the offence is likely to facilitate new prosecutions on the basis of evidence that would currently be gathered. Some investigations will need to be fuller in the future than is currently the case and will be the responsibility of the police rather than the HSE or local authorities. However, cases that are most resource intensive, involving major public incidents, are already subject to full investigation. 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.

Some deaths related to Crown bodies will give rise to an investigation that is wider than current police consideration of the fatality, but as the estimate of prosecutions is fewer than one a year any additional work for the police from Crown cases will arise very infrequently.

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

Criminal Prosecution Services¹⁰

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, judged by reference to the management of activities under its senior managers, for liability. We anticipate that all of the referrals will be ones that would currently be subject to investigation, by the police, HSE or local authorities. Therefore we do not anticipate a large increase of entirely new cases being referred to the prosecution services 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 very few such cases indeed).

Taking this into account, we expect, in particular in the early years after introduction, that there would be an increase of 20 – 25 referrals each year. The estimated cost to prosecuting authorities would be in the region of £660 – 825k. We would expect the number of referrals and costs to decrease as familiarity with the new offence increases.

In terms of prosecutions, we estimate that the proposals would lead to a possible 10 - 13 extra prosecutions per year for corporate manslaughter. We expect that all of these cases would be ones which are currently prosecuted by the HSE or local authorities, except for rare cases against the Crown. Based on the average cost of a corporate manslaughter prosecution, this would amount to some £1.3 – 1.7million for the prosecuting authorities (some of which, in the form of review costs is likely to be currently incurred as these will be cases which are likely to be referred for consideration at present). 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, and indeed in many cases to date prosecution costs have been incurred as well.

¹⁰ Criminal Prosecution Services includes: the Crown Prosecution Service in England and Wales, the Crown Office and Procurator Fiscal Service in Scotland and the Public Prosecution Service for Northern Ireland

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 management failings to organisations 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 very 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 10 - 13 additional prosecutions are not (as explained above) expected to be new prosecutions for the court system. Court costs are calculated to be £3,305¹¹ per day. Five trials, each lasting an average of five days, would cost some £165 - 215k 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.

Enforcement benefits

Finally the additional costs of enforcement need to be balanced against the potential saving resulting from having a more effective law of corporate manslaughter.

In cases of public disasters, public inquiries are often held in cases where in the future corporate manslaughter charges may be brought. The cost of public inquiries can vary widely but are commonly over £1million and sometimes much more. For example, the public inquiry into the Marchioness tragedy was £6.3million and that into the Ladbroke Grove train crash was £8.6million. A corporate manslaughter charge might lessen the need for public inquiries or reduce the scope of what they need to cover, in particular in terms of the events leading up to the disaster, and consequently reduce their costs.

The defects in the current law have also led to lengthy and expensive cases failing. These cases would not necessarily succeed under the new law, but the increased clarity in the law should lead to fewer cases being brought where they eventually fail. The failure of such cases can result in large payments to defendants of costs. For example, the costs paid to defendants in the proceedings following the Hatfield train crash were almost £21million.

¹¹ Department for Constitutional Affairs.

EQUITY AND FAIRNESS

55. 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.
56. The provisions of the Race Relations (Amendment) Act 2000 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

57. 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 help to 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

58. 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

59. It is for the police to investigate criminal offences under the general criminal law, and for the criminal prosecution services 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.
60. 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. 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

61. We would propose to review the application of the offence three years after the legislation enters into force. The CPS and COPFS will record the number of corporate manslaughter/homicide 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

62. 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.
63. 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.
64. In March 2005 the Government published a draft Bill on corporate manslaughter, comments on it were welcomed and over 180 were received. A summary of these responses has also been published. As in the 2000 consultation, there was strong support for reform and this support came from across the sectors.
65. The Home Office has consulted closely with other Departments and other relevant bodies in developing proposals, including HSE.

SCOTLAND

66. The Government consulted both in 2000 and 2005 on the basis that the offence would apply to England and Wales but not to Scotland.
67. Although this means that there has been no specific consultation in Scotland on the proposal, responses were received (to the 2005 consultation) from individuals in Scotland and many of the organisations who responded are companies with operations across the UK. There was strong support from many organisations responding that the offence should apply across the UK. The Scottish Executive established an Expert Group to review the law in

Scotland on corporate liability for culpable homicide . The Group reported on 17 November 2005 and the report and other papers are available on the Scottish Executive website (www.scotland.gov.uk).

68. In terms of the impact in Scotland, the impact assessment published in 2005 for costs to industry were estimated on a UK wide basis, and the cost benefit analysis applies equally to Scotland. It is estimated that there could be around 2 prosecutions for corporate homicide in Scotland each year.

NORTHERN IRELAND

69. In 2005 the Northern Ireland Office consulted in Northern Ireland on the extension of the Government's proposals to Northern Ireland. No specific comments were made about the potential cost of the offence.
70. Again, as the impact assessment in 2005 also covered the potential costs to industry in Northern Ireland no additional assessment is made in this assessment. It is estimated that there will be fewer than 1 case per year in Northern Ireland of corporate manslaughter.

SUMMARY

71. The Government is strongly committed to reforming the law. The proposals set out in the 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 overall management of organisations.
72. 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 1: Estimated costs of the new offence¹² compared with costs associated with work-related injuries including fatal accidents¹³.

COST OF NEW OFFENCE	COST OF WORKPLACE ACCIDENTS AND ILL-HEALTH
<p>Cost to industry</p> <ul style="list-style-type: none"> • £5 – 6.5m: defending prosecutions¹⁴ • £6m: legal advice on new proposals • £6m: additional training costs 	<p>Cost to industry</p> <ul style="list-style-type: none"> • £3.9 - £24.2bn <p>Cost to state</p> <ul style="list-style-type: none"> • £6.9 - £9.6bn <p>Cost to individuals</p> <ul style="list-style-type: none"> • £10. - £14.7bn
<p>Cost of prosecuting new offence</p> <p>£165-215k courts¹⁵ £2 - 2.5m prosecution service costs¹⁶</p>	
TOTAL	TOTAL
<p>£17 – 18.5m (industry) £19.2 – 21.2m (industry and prosecution)</p>	<p>£20-£31.8bn £200-£318m saved on a 1% reduction</p>

Home Office
July 2006

¹² An explanation of these calculations appears in the annex.

¹³ See paragraph 29.

¹⁴ Includes costs potential defendants in both public and private sectors

¹⁵ Although only a proportion of these will be new costs – see paragraph 53 **The courts.**

¹⁶ As above, only a proportion of these will be new costs and prosecutions will currently be undertaken by HSE – see paragraph 53

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 10 - 13 prosecutions** are estimated in line with the higher figures provided by respondents: an average of £500k per case, giving a total of £5 – 6.5m. 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