

CORPORATE KILLING

EXPLANATORY MEMORANDUM

This Bill needs to be read alongside the document “A Hard Day’s Work Never Killed Anyone – Negligent Bosses Did” published by the T&G

Introduction

1. These explanatory notes relate to the Corporate Killing Bill. They have been prepared in order to assist the reader of the Bill. They do not form part of the Bill.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be a comprehensive description of the Bill.

Summary

3. The purpose of the Bill is to enact an offence of corporate killing that applies to all companies and unincorporated organisations, including crown bodies. It also applies to English/Welsh registered companies that commit the offence abroad.
4. The offence will allow these organisations to be prosecuted if it can be shown that there was a very serious management failure within the organisation that was a cause of the death or deaths.

Background

5. In 1996, the Law Commission published a report that recommended the enactment of a new offence of Corporate Killing. In 2002 the Government published a consultation document that supported this recommendation.
6. The new offence is required because under the existing law (a) it is difficult to prosecute a company – particularly a large one – for manslaughter, and (b) it is not possible to prosecute unincorporated organisations or crown bodies for the offence of manslaughter.

Section one

7. Section one creates a new offence of Corporate Killing. Section 1(1) and 1(2) comprise the exact wording of the offence set out in the Law Commission’s 1996

final report which was accepted by the Government in its consultation document of 2000.

8. These sections make it an offence if:
 - there has been a ‘management failure’ by the corporation;
 - the management failure is ‘a cause or one of the causes’ of a person’s death;
 - the failure “constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances.”
9. It also states that a management failure can still be regarded as a cause of a person’s death even though the immediate cause is the act or omission of an individual.
10. It states that there is a management failure by a corporation if the “way in which its activities are managed or organised fails to ensure the health and safety of persons employed in or affected by those activities”.
11. Section 1(3) and 1(4) deals with the sentence that can be imposed upon the court against a corporation found guilty of the offence. Together they state that this fine is ‘unlimited’ and in fixing the level of fine the court should take into account the need for the fine to have a deterrent effect.
12. Section 1(5) states that a corporation can still be prosecuted for the offence of manslaughter under the existing principles of law (i.e using the ‘identification’ doctrine).

Section Two

13. Section 2 sets out what is meant be a ‘corporation’. It states that this includes (a) all companies (however constituted whether under the Companies Act, by statute or by some other means) including those that are crown bodies, and (b) any other unincorporated organisation which provides employment (‘undertakings’) including those that are crown bodies. The definition of ‘undertaking’ is based on the definition contained in the Local Employment Act 1960. The definition of crown body comes the Scotland Act 1998, Schedule 2, para 2(3).

Section Three

14. Section 3 sets out the procedures to be used when prosecuting unincorporated bodies for this offence. This section is required as non-corporate bodies do not have a separate legal personality and therefore can not usually be prosecuted. The wording of this section is taken from section 734 of the Companies Act 1985 which allows for the prosecution of ‘unincorporated associations’ for particular offences under the Companies Act.
15. Section 3(1) states that any prosecution should be brought in the name of the organisation and that the same rules of court that apply to companies in relation to the service of documents should also apply to unincorporated bodies.
16. Section 3(2) states that any fine imposed should be paid by the organisation itself rather than any individual members of the organisation.
17. Section 3(3) states that the procedure for prosecution is the same as the procedure used for the prosecution of companies.

18. Section 4 allows a corporation to be prosecuted for both corporate killing and a health and safety at work offence, and if acquitted of corporate killing allow the corporation to be convicted of the health and safety offence in the alternative.

Section Five

19. Section 5 ensures that the Schedule to the Act takes effect

Section Six

20. Section 6 states that this Act does not apply in relation to any death that has taken place before it comes into force. This means that the new offence of corporate killing is not retrospective. However, conduct which takes place prior to the coming into force of this Bill will still be able to form the basis of a corporate killing charge as long as the death took place after the coming into force of this Bill. It also states that this Act comes into force after two months from the day on which it is passed.

Schedule

21. The amendment of ‘The Offences against the Person Act 1861’ will allow English/Welsh companies, registered under the Companies Act, to be prosecuted for the offence of corporate killing if they commit the offence abroad. It does not apply to unincorporated bodies and crown bodies. At present Section 9 and 10 of the 1861 Act, when read alongside the Nationality Act, allows British citizens to be prosecuted in England/Wales if they commit the offence of murder/manslaughter abroad. This amendment will ensure compatible principles apply to British Citizens and companies.
22. Amendment of the Coroners Act 1988 ensures that any matter that involved the offence of manslaughter will also apply to where Corporate Killing is involved.