



A HARD DAY'S
WORK NEVER
KILLED ANYONE

NEGLIGENT BOSSES DID

The case for a new corporate killing law and for health and safety duties to be placed on company directors

A report by the






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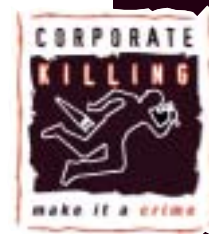
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Introduction from Bill Morris



Last year, some 300 people went to work and never returned home again – they were killed at work because of their employer's negligence. Workers are daily burned, crushed or asphyxiated in fatal incidents which are the result of some failure by senior management.

The Transport and General Workers' Union says this is not acceptable and companies must be made to answer for such negligence.

The Home Secretary has stated the government's commitment to legislation but what is needed is a clear commitment against further delay.

The T&G is now launching a campaign urging the government to bring forward their proposed legislation in the next session of Parliament, Autumn 2003.

The Law Commission recommended in 1996 that an offence of corporate killing should be enacted. Since then the total number of work-related deaths has exceeded 1500, some 200 of which, according to the Health and Safety Executive, are the result of serious management failures and could inspire prosecutions under the proposed new law.

This horrendous toll of death and injury is unacceptable and the law must now be changed to place a statutory duty on company directors to protect employees and public.

The T&G has therefore drafted two bills that we believe should become law.

The first, the Health and Safety [Duties on Directors] Bill, is concerned with imposing safety duties upon company directors and the appointment in large companies of "health and safety directors".

At present, it is perfectly lawful for company directors never to discuss safety at board level. They remain totally ignorant of the problems their employees may be facing and safety matters are delegated to individuals with so little power within the company they are unable to change things. We say this must end.

The second Bill, the Corporate Killing Bill, is concerned with the enactment of a new offence of corporate killing, which applies to all employing organisations, including Crown bodies and British companies that commit offences abroad.

Together these Bills would provide both workers and the general public with the protection they need. Furthermore, they would dispel the widely-held impression that the corporate world can evade justice.

Government has a duty to inspire a revolution in work-place health and safety by bringing forward the legislation needed to ensure that companies and directors who negligently place others in unacceptable risks are held to account.

The saying goes that a hard day's work never killed anyone. But a negligent boss can and often does. Workers have a right to a safe environment and they have a right to protection from negligence.

Bill Morris, General Secretary



Foreword from Louise Christian



This important report makes a valuable contribution to the debate about corporate manslaughter law at a crucial time. As a solicitor who has acted for many of the families who have felt let down and betrayed by the present system I am pleased that campaigns by the TUC and safety organisations, as well as by individual trade unions like the T&G, are at long last seeing some outcome.

On 20th May 2003 the Home Secretary announced that a draft bill to enact new legislation would be published in the autumn of 2003 and a timetable announced at that time. Enacting a new law has long been in the manifesto of the Labour party and the families of those who have died in disasters and in deaths at work have called on the government to make good its commitment.

Now that we know the government will do so, there needs to be as wide ranging a discussion as possible to make sure that the new law will promote greater accountability and act as a deterrent to health and safety breaches by companies.

This report considers not only the need for a new law of corporate killing but also the case for legislating to place duties on company directors in relation to health and safety. I hope the government will take on board all the points it raises and that we will see effective legislation expeditiously put before Parliament.

*Louise Christian (Solicitor for families of many of the rail crash victims)
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Preventing harm and increasing accountability

15 years ago, in March 1987, the ferry, the Herald of Free Enterprise, sank off the Belgian coast near the town of Zeebrugge killing 192 people and injuring dozens of others.

This disaster was the first in a long line of tragedies which involved the deaths and injuries of many hundreds of workers and members of the public (see box).

DISASTERS SINCE 1987

Kings Cross Underground Fire	1987	31 dead
Piper Alpha Oil Rig Fire	1988	167 dead
Clapham Rail Crash	1988	37 dead
Kegworth Airline Crash	1989	47 dead
Hillsborough Football Stadium crush	1989	97 dead
Marchioness Riverboat sinking	1989	51 dead
Southall Rail Crash	1997	7 dead
Paddington Rail Crash	1999	31 dead
Hatfield Rail Crash	2000	7 dead
Potters Bar Rail Crash	2002	7 dead

Although these disasters involved different companies and occurred across a range of different industries, the Public Inquiry reports show that most shared a common cause; the disaster could have been prevented had senior company officers taken steps to ensure that their organisation operated safe systems of work with strong safety cultures.

- the Zeebrugge disaster itself would not have happened had senior managers of P&O European Ferries installed indicator lights so that the ships' Masters knew whether the Bow doors were open or not. Indeed the Inquiry report concluded that the Board of Directors had not appreciated "their responsibility for the safe management of the ships. They did not apply their minds to the question: What orders should be given to the safety of our ships? The directors did not have any proper comprehension of what their duties were ... From top to bottom the body corporate was infected with the disease of sloppiness."¹
- there would have been no Kings Cross Underground fire had the senior managers of London Underground Limited learnt the lessons from previous fires and tried to minimise their outbreak. As the Director General of Royal Society for the Prevention of Accidents told the public inquiry, "there had been a collective failure from the most senior management level downwards over many years to minimise the outbreak of fire and more importantly to foresee and plan for an uncontrolled outbreak of fire at an underground station with a real potential for large loss of life."²
- 167 men would not have been killed in the Piper Alpha disaster, had Occidental Petroleum managers set up a safe 'permit-to-work' system and ensured that workers were properly trained in its use. The inquiry report stated that there were 'significant flaws in the quality of [Occidental Petroleum's] management of safety which affected the circumstances of the events of the disaster. Occidental management should have been more aware of the need for a high standard of incident provision and fire fighting. Senior management were too easily satisfied that the permit to work system was being operated correctly, relying on the absence of any feedback of problems as indicating that all was well ... They adopted a superficial attitude to the assessment of the risk of major hazard.'³

Disasters, involving the deaths of dozens of people, quite rightly gain enormous media and public attention. However in the 16 years since the Zeebrugge disaster, there have been over 4500 deaths at the workplace.

¹Department of Transport (1987), MV Herald of Free Enterprise: Report of Court No 8074, HMSO

²Department of Transport, (1988) appendix M. Investigation into the Kings Cross Underground Fire, Cmnd 499, HMSO

³Para 1.14, Department of Energy (1990), The Public Inquiry into the Piper Alpha Disaster, Cmnd 1310, HMSO



Workers are daily burned, crushed or asphyxiated to death in incidents, which though outside the media glare, are often the results of the same types of failure on the part of senior management as those that caused the disasters (see box).

DEATH OF FOUR MEN ON THE AVONMOUTH BRIDGE

On 8th September 1999 Paul Stewart (23), Andrew Rogers (40), Jeffrey Williams (42) and Ronald Hill (39) fell 25 metres to their death when strong winds blew the gantry off the Avonmouth Bridge. They were working for Kvaerner (Cleveland Bridge) Ltd and Costain Ltd, which were involved in a joint venture which had been provided £650 million from the Government to undertake major construction work on the bridge.

On 29th November 2001 the companies pleaded guilty to health and safety offences and were fined a total of £500,000. The HSE stated in court "The seriousness of the case lies not only in the number of health and safety breaches committed by the company but that fact that the dangerous working practices of the company not only put the lives of the workmen at risk but other workers on site, residents in the vicinity of the bridge, road and rail users at risk ... It can properly and fairly be said that this was an accident waiting to happen. There was nothing unusual or unforeseeable about the combination of events that led to the collapse of the gantry.The lack of safety in design and construction from start, and the failure to react to incidents prior to the fatal accident, is evidence of blindness to basic health and safety principles of truly staggering proportions." No manager or director was prosecuted.

DEATH OF DAVID MARTIN

David Martin, aged 49, was crushed to death on 5th December 2000 when a steel plate fell on top of him whilst employed as a maintenance electrician for a steel metal fabrication company called Service Welding Ltd in Tyneside.

David, and his son Mark, were moving a one-tonne steel plate from one end of the factory to the other using an overhead travelling crane. The plate was held by the crane using a 'load hook' that was inserted through the eye of a 'plate clamp'. During this process the load hook slipped out of the eye of the plate clamp and the plate came loose and crushed David.

Prior to this incident an insurer's report had instructed the company to both replace the load hook and to add safety catches to it. This report was seen by the directors of the company but they failed to take any action. The company was prosecuted for health and safety offences but prior to the case being heard in court, the company went into liquidation – and one of the company directors became a director of another company. No director was prosecuted for any offence.

DEATH OF JONATHAN RODGERS

Jonathan, an employee of Midlands Electricity Board (MEB) received fatal burns on 6 July 1998 when he came into contact with 33,000 volts of electricity whilst standing on a mobile platform undertaking maintenance work at a sub-station in Stoke on Trent. MEB, with a £400 million turnover, pleaded guilty to five health and safety offences and was fined £85,000. No manager or director was prosecuted.

The court heard that Jonathan was only shown a 'schematic diagram' of the working area which did not mark out some of the dangerous areas. There were no physical layout diagrams at the site. The company had not undertaken any formal risk assessment which had it been done "would have revealed the buzz bars which caused the incident". Company engineers had told the investigators that the safety rules in force at the plant were "unclear and hard to interpret". There was inadequate training and supervision, and no company manager had undertaken a site visit. The type of mobile platform used that day was unsuitable – and had not even been earthed.

As the Health and Safety Executive has repeatedly stated, 70% of workplace deaths are the result of management failures. Since so many deaths and injuries – caused by disasters or individual workplace incidents – can be prevented if action is taken by the senior management of companies, the government must make reforms that ensure that company boardrooms do take the action that is necessary that will make their companies safer.

It is our view that the key reform required is the imposition of safety duties upon company directors. This is because under current law directors have no positive duty to take any steps to ensure that their company is complying with health and safety law.

But disasters and individual workplace deaths have more in common than just failures on the part of directors and senior management. They also face the same defects in the laws that are supposed to bring the responsible companies and senior managers to account through the criminal justice system.

No disaster has ever resulted in a successful manslaughter conviction against a company or senior manager. And only nine work-related deaths have ever resulted in a manslaughter conviction.

And while many companies are successfully prosecuted for health and safety offences – a far less serious offence than manslaughter – no disaster, and only a handful of workplace deaths, have ever resulted in the prosecution of a director or senior manager for these offences.⁴

The lack of corporate criminal accountability gives the appearance that companies and directors are above the law; while the criminal justice is so earnest in catching traditional criminals, corporate criminals appear immune from prosecution for serious offences.

The failure of the law in this area means not only is there a serious lack of moral justice, something most keenly felt by those bereaved by corporate offenders; it also gives the impression to the corporate world that they can evade justice. It prevents deterrence, and allows unscrupulous employers to continue to place the lives of workers and members of the public in jeopardy.

This is another area that the government must act upon. And this is why they must reform the law of manslaughter and enact a new offence of Corporate Killing.

⁴Since 1996, whilst over 2600 companies have been convicted of health and safety offences, only 15 directors or senior managers were convicted



THE T&G BILLS

Since the government has failed to introduce legislation in this area, the T&G has drafted two Bills that it believes should become law.

The first Bill, the 'Health and Safety (Duties on Directors) Bill' is concerned with imposing safety duties upon company directors and the appointment, in large companies, of 'health and safety directors'. The second Bill, the 'Corporate Killing Bill' is concerned with the enactment of a new offence of corporate killing that applies to all employing organisations including Crown bodies and to British companies that commit the offence abroad.

A great deal of public attention has been focused on the second Bill and the need to reform the law of corporate manslaughter – and the government has recently made a clear commitment to legislate on this issue⁵. However this reform in itself is not enough. While it will make companies – and other employing organisations – more accountable when their serious failings have caused a death, and would hopefully have a deterrent impact upon company directors who would not want their companies to be prosecuted for such a serious offence, it will not impact upon most directors. This is because most directors work in companies where a death is highly unlikely to take place, and their conduct will not be effected by the threat of a prosecution for corporate killing. In these companies, it is more likely that there is a risk of a serious injury taking place – 27,500 of which take place each year – and directors of these companies will only make the necessary safety changes if the law requires them to take action. That is why it is necessary to legislate on directors duties.

It is appropriate that these bills are drafted separately, as, although they are both focused on achieving worker and public safety, one is concerned with imposing duties and the other is concerned with the enactment of a new criminal offence. In addition they are the responsibility of different government departments. Corporate Killing is the responsibility of the Home Office, while Directors Duties is the responsibility of either the Department of Work and Pensions or the Department of Trade and Industry,

In drafting these bills, the T&G has gained the assistance of the independent advice and research organisation, the Centre for Corporate Accountability.

⁵Made by Rt. Hon David Blunkett, Home Secretary on 20 May 2003

Director duties

BACKGROUND

There are no individuals within a company more important to ensuring that a company operates safely than company directors. It is they who decide

- the level of resources that the company puts into safety. This can affect staffing, training, instruction, safety equipment and the general priority given to safety within the company.
- how the company balances the objects of safety and "production" and the extent to which other managers within the company prioritise safety.
- whether or not their company is subject to proper safety audits, whether or not employees are encouraged to inform the company about safety concerns, whether or not the company is proactive in identifying unsafe practices and, if so, at what speed, these practices will be changed.

The relationship between the conduct of directors and the safe operations of a company is well known, accepted by the government and the HSE and, is indeed, entirely uncontroversial.

One would imagine that along with that control would come safety obligations. Yet the law does not impose any positive duty upon company directors to take any action to ensure that their company abides by health and safety law or indeed to ensure that workers and members of the public are not at risk.

It is perfectly lawful for company directors never to discuss safety at Board meetings, to remain totally ignorant of what safety problems the company employees may be facing and to delegate any safety matters to individuals low down the management hierarchy who have little power within the company.

The law in effect permits neglect on the part of unscrupulous or disinterested directors.

This lack of obligation is very different of course from the financial duties imposed upon company directors – duties that are detailed and, if breached, can result in up to seven years imprisonment, but which are simply concerned about protecting the financial interests of the company shareholders.

Health and safety law does indeed impose safety obligations – but these duties are imposed upon the company which has a legal identity distinct from either the directors, the shareholders or the employees.

This, of course, is rather peculiar. While the power, resources and control are with the company directors, all the obligations are imposed not upon them but upon the company.

It may well be the case that a director may want to ensure that his or her company is complying with its health and safety obligations and ensure that it avoids any enforcement action. However, the point is that directors have no legal obligation to do so and as a result many, if not most, take insufficient action to ensure that their company's activities are safe.

The lack of duties has a two-fold impact. It creates a situation where directors are in effect left to their own devices about how they should conduct themselves. While some may interest themselves in the safety of the company, others will not. This would of course not be so serious if the conduct of company directors was not so crucial to whether a company is safe or not.

The absence of duties must be one of the main reasons why so many companies continue to breach basic health and safety laws.



The second impact of the lack of duties is that it makes it difficult, and indeed sometimes impossible, to prosecute directors for either manslaughter or for health and safety offences. Failures on the part of directors to take particular action may, on a common sense view, be seen as either negligent or indeed grossly negligent, but the absence of any legal obligations allows directors to escape prosecution.

Imposing duties upon directors will therefore both increase worker and public safety and ensure increased accountability for existing criminal offences.

A HEALTH AND SAFETY DIRECTOR?

The debate on 'directors duties' raises the question about whether the duty should be imposed upon all directors or just upon a nominated director. The advantage of having a nominated director is that it ensures that there is clarity about who exactly has the legal responsibility for safety. The disadvantage is that it could leave the other company directors without any legal obligations, and in addition, create a situation where the health and safety director can be scapegoated for decisions (or failures to make decisions) on the part of the other directors. If the duty is solely placed upon the nominated Health and Safety Director, it is easy to see why no-one would want to take up this position.

The Health and Safety (Directors Duties) Bill has been drafted with this question very much in mind. It ensures that all directors have certain shared legal obligations relating to safety, but that in addition, it places an obligation on large companies to nominate a particular director with responsibility to provide safety information to the Board. This twin set of obligations should ensure that the obligations upon the safety director are not too onerous and that the person taking up this position can not be scapegoated inappropriately.

WHAT THE GOVERNMENT HAS SAID ABOUT DIRECTORS DUTIES

A year before the Labour government came to power in 1997, Michael Meacher MP, then shadow Environment spokesperson, stated in Parliament:

“I emphasise that responsibility for health and safety must be vested at the highest level of each organisation. Companies should appoint an individual at Board level with overall responsibility for health and safety.”

Three years after the Labour Party's victory at the election, the government published its strategy statement on health and safety⁶. Action point 11 (see box). This committed the Health and Safety Commission to publish a voluntary code of guidance on directors responsibilities. It also stated that:

“It is the intention of Ministers, when Parliamentary time allows, to introduce legislation on these responsibilities.”

⁶“Revitalising Health and Safety”, published by the Department of Environment, Transport and the Regions and the Health and Safety Commission on 7 June 2000

ACTION POINT 11

The Health and Safety Commission will develop a code of practice on Directors' responsibilities for health and safety, in conjunction with stakeholders. It is intended that the code of practice will, in particular, stipulate that organisations should appoint an individual Director for health and safety, or responsible person of similar status (for example in organisations where there is no board of Directors).

The Health and Safety Commission will also advise Ministers on how the law would need to be changed to make these responsibilities statutory so that Directors and responsible persons of similar status are clear about what is expected of them in their management of health and safety. It is the intention of Ministers, when Parliamentary time allows, to introduce legislation on these responsibilities.⁷

In July 2001, the HSC published voluntary guidance on 'Directors' responsibilities for health and safety', which is supposed to provide "good practical advice on health and safety for directors and board members of both public and private sector organisations".

However, nothing more was heard from either the HSC or the government on the second part of the action point until April 2003 when Nick Brown stated:

"The HSC expects to send Ministers its advice later this year; it will set out the effectiveness of its recent initiatives on directors' responsibilities and the case for and against further legislation in this area. I can assure you that the Government will, as part of its consideration, evaluate the need for legislation to strengthen board accountability for health and safety."⁷

However, although it is positive that the government is still considering legislation in this area, this is a backtrack from the commitment made in the Strategy document where legislation only depended upon 'parliamentary time'.

SUMMARY OF THE HEALTH AND SAFETY (DIRECTORS DUTIES) BILL

This Bill is based around a Bill tabled by Ross Cranston MP QC, which was printed by the House of Commons on 25 March 2003⁸.

The full text of the new draft bill is available from the T&G.

General duty on all directors

A general duty is placed upon all company directors to 'to take all reasonable steps to ensure that the company acts in accordance with the obligations imposed on it by any applicable law relating to health and safety'.

This is the key duty that is currently absent in law.

⁷Excerpt from standard letter sent out in March 2003 by trade unions to the Department of Work and Pensions

⁸The is Bill 82, and is titled the *Director Duties (Health and Safety) Bill*



The duty is not an absolute one; the directors only have to take all 'reasonable' steps.

The Bill does not set out in any further detail what those steps should be. The Bill instead gives the Health and Safety Commission the power to draft an Approved Code of Practice that would set out the details of those steps. This would allow, for example, for there to be distinctions made between the responsibilities of Executive and Non-Executive directors.

Nomination of Safety Directors

The Bill imposes a duty on all companies, other than those that are defined as 'small' or 'medium' under the Companies Act 1985, to "appoint one of its directors as the health and safety director" and to put that person's name in their Annual return.

This director is obliged to 'take all reasonable steps' to comply with a number of duties that are set out in some detail in the Bill. These duties (see box) are concerned with ensuring that the board of directors has all the appropriate information that will allow them to comply with their duty of ensuring that the company is complying with health and safety law.

The relationship between the general duty imposed on all directors and the specific duty upon the 'nominated' director is crucial to ensuring that the nominated director cannot be scapegoated and does not have too onerous duties. The duty of the nominated director is to obtain information for the Board of Directors who then must use it as part of complying with their general duty.

A duty is also placed upon the Board to:

- ensure that the company has "adequate arrangements to ensure that the health and safety director is provided" with the information that he needs to carry out his duties.
- take into account the information provided by the nominated director

DUTIES OF NOMINATED DIRECTOR

(a) to inform the other directors not less than four times a year, of;

- (i) how the company's activities are affecting the health and safety of its employees and other persons not in the company's employment;
- (ii) the adequacy of the measures taken by the company to ensure that it complies with any law relating to health and safety and any further measures that may be necessary for this purpose;

(b) to inform other directors promptly on:

- (i) any significant health and safety failure by the company and the steps that have been taken, or will be necessary, to rectify it;
- (ii) details of any deaths, injuries or other incidents that the company has a duty to report under any of the relevant statutory provisions specified in the first column of schedule 2;
- (iii) details of any notice which has been served on the company or on one of its employees under any of the relevant statutory provisions specified in the first column of schedule 3;
- (iv) details of any proceedings which have been brought against the company for an offence under any law relating to health and safety or for any offence arising out of a death.

(c) to inform the board on the health and safety implications of its decisions.

Reforming the law of Corporate Manslaughter

BACKGROUND

The offence of manslaughter can be committed by both individuals and companies. An individual commits manslaughter when it can be proved beyond reasonable doubt that the person caused a death through 'gross negligence'.

Under the current law, there is no separate test that allows the courts to assess whether or not 'the company' has acted with gross negligence. It is not possible, for example, for the courts to consider the various failures on the part of the company and determine whether or not in aggregation it could be said that they constituted gross negligence. Instead corporate guilt is entirely dependent on individual guilt. If an individual who is deemed to be a 'controlling mind and will' of the company is prosecuted for manslaughter the company can then, and only then, separately be charged for the offence of manslaughter. The company will be convicted of the offence if the individual is guilty and innocent if the individual is innocent. This is known as the 'identification' doctrine.

Who is deemed to be a 'controlling mind and will' of a company? This is for the courts to determine in each individual case, but all company directors and any senior managers will certainly be considered to be a 'controlling mind and will'.

There are many problems with a test that associates the guilt of the company with the guilt of an individual. However, the key one, particularly in relation to large companies, is that, it fails to reflect how companies operate. Corporate conduct can rarely be reduced to the conduct of a single individual – however senior within the company. Decisions in large companies – which could be judged as 'grossly negligent' – are often made by a number of different individuals within the company who are at different levels within the corporate hierarchy. Indeed, the failures that common sense would suggest should be the subject of a manslaughter charge are in effect 'system' failures, which simply cannot be put down to the conduct of a single individual however senior within the company.

As a result large companies with very serious management failures, which can be attributed to a host of different individuals at different levels within the organisation escape prosecution. So, although Justice Sheen in the public inquiry concluded that:

“the directors [of P&O European Ferries] did not have any proper comprehension of what their duties were ... From top to bottom the body corporate was infected with the disease of sloppiness,”

the company was able to escape conviction as it was not possible to successfully prosecute a director or senior manager. Moreover, the current law gives an incentive to directors to delegate responsibility to individuals who are not 'controlling minds of the company', so that the company can never be prosecuted.

A prosecution for manslaughter will therefore rarely succeed except against a small company where the lines of responsibility are clearly drawn and/or major decisions are taken by one or two people. Indeed, as a judge stated in a ruling that brought the manslaughter prosecution against Great Western Trains over the Southall train crash to an end:



“[it] is virtually impossible to bring a successful prosecution against a large corporation, particularly where as here, the allegation is essentially based on a system failure.”

Of course, in those rare situations when there is enough evidence to prosecute an individual director of a large company for manslaughter, is it appropriate to prosecute the company (as well as that individual) on that basis alone? Should it not be necessary to show that the company as a whole failed in some significant manner – not just an individual – before prosecuting the company?

It is because of these reasons and the reality that so few companies have ever been prosecuted for manslaughter, that the calls for reform of the law have been increasing in strength.

THE OFFENCE OF CORPORATE KILLING

It was the collapse of the P&O European Ferries trial in 1990 that first triggered off demands for a change in the law and was in part responsible for the Law Commission publishing a report in 1996 that proposed that there should be a new offence of ‘Corporate Killing’.

It is this core offence which the T&G Bill is concerned about enacting. The offence would allow a company to be prosecuted if it could be shown that:

- there was a ‘management failure’;
- the management failure ‘fell far below what could reasonably be expected’
- the failure was ‘the cause’ or ‘one of the causes’ of the death.

A management failure is defined as:

“the way in which [the company’s] activities are managed or organised fails to ensure the health and safety of persons employed in or affected by those activities.”

The offence could therefore be prosecuted without the need to prosecute a director or senior manager. It would be an independent test of the company’s culpability.

THE GOVERNMENT’S POSITION

In October 1997, at the first Labour Party conference after the Labour government’s election in May, the Rt Hon Jack Straw MP, then Home Secretary, promised to enact the offence.

Three years later, in May 2000, the government published a Consultation Document in which it formally accepted the Law Commission’s recommendation concerning the enactment of a new offence of corporate killing.

However, it stated the following:

- the offence should not just apply to corporations but also to all employing organisations, otherwise known as 'undertakings'. There would however be one exception; the offence would not apply to Crown bodies – that is to say, any government department or other organisation either controlled by government or which is stated to be a crown body in the statute that established the organisation.
- the offence would not apply to British companies that committed the offence abroad. In stating this, the government made a distinction between British citizens on the other hand who could be prosecuted for committing a homicide offence abroad and British Companies on the other who could not.
- it stated that individual directors or managers could be prosecuted for aiding and abetting the company in committing the offence, and asked for comment on whether there should be any additional offences that would allow a director to be prosecuted for 'contributing' or 'significantly contributing' to the offence by the company.
- it stated that the Health and Safety Executive and other regulatory bodies should be able to investigate and prosecute this new offence (without any necessary involvement of the police). At present only the police have the authority to investigate manslaughter offences (although the HSE does assist the police in its investigations) and the Crown prosecution Service is the only body that can prosecute

In its manifesto for the May 2001 general elections, the Labour Party stated that 'Law Reform is necessary to make provisions against corporate manslaughter.'

By mid 2002, the government still had not responded to the consultation process, but in August the Home Office began conducting a regulatory impact assessment for the new offence, and in its letter to employer organisations indicated that the government was no longer in favour of introducing new offences concerned with directors 'contributing' to the offence of corporate killing

Since then Ministers have continued to make a number of official statements confirming that the government remains committed to reform in this area. On 20 May the Rt. Hon. David Blunkett MP, the Home Secretary, stated that the government would be publishing a draft bill and that 'a timetable for legislation and further details would be announced this autumn'. He stated that:

“There is great public concern at the criminal law’s lack of success in convicting companies of manslaughter where a death has occurred due to gross negligence by the organisation as a whole. The law needs to be clear and effective in order to secure public confidence and must bite properly on large corporations whose failure to set or maintain standards causes a death. It is not targeted at conscientious companies that take their health and safety responsibilities seriously.”

However crucially, no date was set when a Bill would be put before Parliament.



THE 'CORPORATE KILLING BILL'

The second Bill enacts the core Corporate Killing offence set out in the Law Commission draft bill, but ensures that:

- it applies all employing organisations, including Crown bodies;
- can be committed by English and Welsh companies that commit the offence abroad;
- can not be solely investigated by the HSE or other regulatory bodies;
- can not be prosecuted by the HSE.

Crown Bodies: There is no reason why in the twenty first century Crown bodies should be immune from a homicide offence. Crown immunity is an archaic principle that does not belong to a modern criminal justice system in particular when dealing with homicide offences. If all other employing organisations can be prosecuted, why not government bodies?

Commission Abroad: The Home Office consultation document outlined a number of reasons why jurisdiction should be limited:

- The government maintains that there would be 'very considerable practicable difficulties' if English/Welsh courts were allowed to prosecute British companies that committed corporate killing abroad. Yet these practical difficulties are no different from those which the government believes can be overcome in relation to individuals who commit homicide abroad, or indeed companies that commit corruption abroad.
- It is suggested that it would not be appropriate to extend jurisdiction, because the government would be 'accused of exporting our laws'.

However, such an accusation could only be made if the government was proposing to impose obligations on companies or citizens of another country. Allowing English/Welsh courts to prosecute British companies when the offence is committed abroad does not have that effect – as it would only affect companies registered in Britain.

- The government suggested that it is their policy to extend jurisdiction only in relation to criminal offences that involve conduct that 'constitutes an offence both here and under the laws of the country in which it happened'.

This is known as the principle of 'dual criminality'. However, contrary to the government's impression in the consultation document, many countries do have laws that criminalise negligent safety conduct, so extending jurisdiction should not in principle be a problem.

Moreover there are some important positive reasons why jurisdiction should be extended. Unless jurisdiction is extended, the new offence of corporate killing would have no deterrent value for British companies with dangerous overseas operations, particularly when these operations take place in the developing world. It is important that there is an incentive for British companies to improve or maintain acceptable standards of health and safety in the activities that it conducts abroad.

Investigation issues: It is important the HSE and other regulatory bodies are involved in the investigation of work-related manslaughter – since they have skills and knowledge not available to the police – but it is equally important that the police are not in any way sidelined from their role of investigating homicides. They have the resources (both financial and in manpower) and the forensic ability to carry out rigorous

investigations and, crucially, without their involvement the offence would soon become perceived as nothing more than a 'super-regulatory' offence.

The Bill therefore does not give the HSE the power to investigate these deaths.

Prosecution issues: There have been, and continue to be, concerns about the Crown Prosecution Service – however they are the principal prosecution body in this country for serious offences and it is appropriate that it is involved in the prosecution of homicide offences, and not a regulatory body as was proposed by the government. The CPS is slowly developing a better understanding of prosecuting corporate manslaughter offences and this needs to be nurtured and developed.

The Bill therefore does not give the HSE the power to prosecute companies and other organisations for the offence of corporate killing.

OTHER REFORMS THAT THE T&G SUPPORTS

The imposition of legal duties on directors and the enactment of a new offence of Corporate Killing are two important legal reforms that will have profound impact in reducing the level of work-related death and injury, as well as ensuring that companies and directors can be held to account for negligently or recklessly causing death and injury.

However there are a number of other reforms required.

- Trade union Safety Representatives should have the power to impose Provisional Improvement Notices
- Trade unions and others should have the power to undertake private prosecutions for health and safety offences without requiring the consent of the Director of Public Prosecutions
- It is necessary for the law to be changed to ensure that sentences imposed upon companies and other organisations convicted for health and safety offences reflect both the seriousness of the offence committed and, if it is a profit making enterprise, its cash flow or turnover. It is also important that the Government considers what other 'innovative' or 'restorative' sentences can be imposed upon organisations, other than just cash fines for both manslaughter and health and safety offences.
- Courts should have the power to impose sentences of imprisonment when company directors and senior managers of other organisations are convicted of health and safety offences.
- The Health and Safety Executive needs to be properly resourced. Health and Safety Inspectors undertake preventative inspections, investigate injuries and deaths, and prosecute organisations and individuals. It is, therefore, crucial that the Health and Safety Executive and Local Authorities have sufficient funds to employ and train enough inspectors to undertake these responsibilities. The Government must at least double the resources available to the Health and Safety Executive over a three year period. The Health and Safety Commission should have £390 million to spend on enforcement by 2005.



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