



The manufacturers' organisation

Industries Views on a New Offence of Corporate Killing

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Is there a case for a new offence?

There is little debate regarding whether there should be a new offence of Corporate Killing rather the issue is what form it should take and when will a Government Bill see light of day! The view of the EEF members, is that there should be a new offence. This offence should be used for those companies who are held to have shown a wanton disregard for the health and safety of their workers or others. However, it is vital that in seeking to introduce a new offence we do not introduce a climate of fear into well managed businesses which could lead to a detrimental effect on health and safety management.

The proposal in context

The extent of the Government's consultation process on the emotive issue of Corporate Manslaughter has emphasised its determination to avoid accusations that it has missed the public demand for action, whilst trying to implement sensible and enforceable legislation.

The engineering sector is committed to initiatives aimed at raising standards of health and safety and reducing the number of fatalities in the workplace, recognising that flagrant disregard for health and safety is intolerable. It accepts that existing legislation can make it difficult for corporations to be held criminally liable for deaths at the workplace and the need for a change in the law. However, there is a danger that a failure to clarify certain aspects of the proposals could have the opposite effect and lead to a lowering of, rather than improvements in, health and safety in the workplace.

The definition of 'corporate killing' requires more explanation. For example, it is unclear what is meant by 'management failure' and 'conduct falling far below what could reasonably be expected'. Courts and juries will need guidance on what is reasonable behaviour and an arbiter of such behaviour will need to decide whether it would apply to what '*the man in the street*' would consider reasonable or that which is good practice in a particular industry sector. These need to be explained in the context of existing health and safety concepts and principles.

Supplementary sanctions

Views have been sought on whether prosecutors should be granted additional powers relating to company finances whilst an investigation or prosecution is underway. Our members believe that the freezing of company assets is inappropriate and would act as a major deterrent for organisations to enter a guilty plea. This contravenes the general principle that a person (or company) is innocent until proven guilty as well as dealing a serious blow to a company's ability to continue trading, before and after the prosecution, whether or not the company is acquitted. This could put many employees' jobs at risk. We are also concerned that if provision were made for assets to be frozen on a guilty plea, businesses would be discouraged from pleading guilty.

Who should prosecute a new offence?

We have serious reservations concerning Health and Safety Executive's (HSEs) ability to investigate and prosecute these proposed new offences. We suggest the creation of a separate investigation and prosecution unit to be established within the HSE, which would include personnel from the police service. The HSE would benefit from police expertise in conducting major criminal investigations and the police would benefit from HSE knowledge of the management of safety systems in the workplace. There would be consistency in approach in investigations and prosecutions following workplace fatalities. At the start of an investigation it may not be clear whether an offence of corporate killing, one

of the individual manslaughter offences or another health and safety offence has been committed and all may need to be considered. With one specialised unit, parallel investigations would be avoided and steps could be taken to ensure that evidence gathered was later admissible in court proceedings. The creation of a specialised unit would also address the issue of potential bias when the HSE investigate undertakings where they have already given advice.

How could 'individual offences' harm health and safety management?

In drafting further proposals the Government should ensure that main purpose of any legislation should be to make further improvements to health and safety in businesses and to encourage undertakings to make health and safety a key part of their culture. As they currently stand, parts of the Government's proposals could have the opposite effect, with undertakings vesting responsibility for health and safety in just a few people and making individuals and companies reluctant to share information openly with the enforcing authorities.

Conclusion

We should be honest with ourselves that a new offence of Corporate Killing has much more to do with society making a clear statement about unacceptable behaviour rather than introducing a measure designed to enhance health and safety performance. This is not to detract from the argument that such an offence is justified and long overdue.