LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Corporate Manslaughter and Corporate Homicide Bill

Liberty's Briefing and Amendments for Committee Stage in the House of Commons

October 2006

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Introduction

1. Liberty greatly welcomes the proposal for a statutory offence of corporate manslaughter. This Bill provides a long-overdue opportunity for Parliament to fill a significant gap in the criminal law. For too long, large organisations have escaped punishment where their gross negligence has killed employees or members of the public.

2. Sadly, however, in its current form the Bill is riddled with exemptions for Government and its agencies. These would operate to deny justice to families that lose loved ones in circumstances like the tragic cases of Victoria Climbie, Zahid Mubarek, Baha Mousa, Jean Charles de Menezes, Naomi Bryant or the young recruits who died in Deepcut barracks. As we explained in our Second Reading briefing and in the briefing material below, we consider these exemptions to be neither acceptable[1] nor necessary.[2] We propose a number of stand part amendments that would remove the inequalities, unfairness and injustice that these exemptions and immunities would create. We hope that, if debated in Committee, these amendments will provide an opportunity to explore the real scope of these confusing Clauses and to draw out the Government's justifications for them. We also propose alternative amendments, which would remove the most unacceptable elements of the many exemptions in the Bill. In response to the Government's argument that other accountability mechanisms are available for Crown bodies, making the application of this offence unnecessary, we propose an amendment that would require the Director of Public Prosecutions to take account of these other accountability mechanisms when deciding whether it is in the public interest to prosecute a Crown body for this offence.

3. As we explained in our Second Reading briefing, we are also concerned that the Bill would not, in its current form, be effective in protecting life and providing justice

[1] All life requires the equal protection of the criminal law and justice for bereaved families should not depend on who was grossly negligent or what activities they were carrying on at the time. The equal application of the law is also a pre-requisite of the rule of law. Respect for the law will be undermined if Government and its agencies are immune from the laws they make, propose and enforce.

[2] The exemptions are not necessary because the offence would only be committed where a body has been grossly negligent in the performance of its functions. The question of whether an organisation has been "grossly negligent" would require the court to take account of the circumstances in which an organisation is required to operate and the nature of the functions they are performing.

to families due to the existence of the senior manager test. We look forward to reading the Government's promised amendments to deal with this widely-acknowledged problem. If these changes would not effectively address our concerns we will consider amendments for Report stage of the Bill. We also expressed concerns about the limited range of punishments that could be imposed on guilty companies and the exclusion of appropriate sanctions for senior individuals who are personally culpable for contributing to the company's gross negligence. Any amendments in this area must strike an appropriate balance between effective deterrent and sanctions on the one hand, and fairness for organisations and senior individuals working within them on the other. Given the range of other organisations that are raising these points we do not at this stage propose amendments to address these concerns. We do, however, look forward to considering the Committee's debates on this important issue.

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Amendment 1: Organisations (Clause 1)

Clause 1, page 1, after line 12, insert:

"(d) a partnership (as defined in section 1 of the Partnership Act 1890 (c.39));

(e) a body of persons unincorporate."

Clause 1, page 2, after line 6, insert the following new clause:

"**Proceedings against Unincorporated Bodies other than Crown Bodies**

"(…) Proceedings for an offence under section 1 above, alleged to have been committed by any unincorporated body other than a crown body, shall be brought in the name of that body (and not in that of any individual member or other person) and for the purposes of such proceedings any rules of court relating to the service of documents apply as it that body were a corporation.

(...) A fine imposed on an unincorporated body on its conviction of such an offence shall be paid out of the funds of that body

(…) In a case in which an unincorporated body is charged with such an offence, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates Court Act 1980 (procedure on charge of an offence against a corporation) have effect in like manner as in the case of a corporation so charged."

Effect

4. This amendment would extend the scope of the Bill so that the offence could be committed by partnerships and other unincorporated bodies such as clubs and associations.

Briefing

5. Only "corporations", bodies listed in Schedule 1 to the Bill, and police forces are currently covered by the Bill. Partnerships, sole traders and other unincorporated bodies, such as clubs and associations, are excluded. This creates a gap in the protection provided by the offence. The decision to exclude unincorporated bodies

appears to be a "u-turn" from the original Home Office Consultation document, which argued against "artificial barriers between incorporated and non-incorporated bodies".

6. The Government has argued that it would not be appropriate to extend the offence to unincorporated bodies because they do not have a distinct legal personality. As a strict matter of company law this is true. We do not, however, consider this sufficient reason to leave a gap in protection for those killed by the gross negligence of large unincorporated bodies such as big partnerships of accounting and law firms which, in the public's perception, do have distinct identities.[3] We are also concerned that this could create an artificial incentive for irresponsible and careless businesses to structure themselves as partnerships rather than companies. Other legislation, like the Disability Discrimination Act 1995, applies to unincorporated bodies showing that liability for such unincorporated bodies is not impossible to achieve.

Amendment 2: The "Relevant Duty of Care" (Clause 3)

Clause 3, page 2, line 17, after "any", insert "duty imposed on it by statute or any"

Effect

7. This amendment would allow organisations to be prosecuted for corporate manslaughter where a person is killed as a result of the gross breach of a duty imposed on them by Parliament, for example under the Health & Safety at Work Act etc Act 1974.

Briefing

8. If an organisation does not owe a "relevant duty of care", as defined in Clause 3, to a person it kills, it cannot be guilty of corporate manslaughter, no matter how serious its failings. The question of what is and is not a "relevant duty of care" is, therefore, of great importance.

[3] In the case of small partnerships or sole traders an individual prosecution for gross negligence manslaughter is likely to be possible.

9. The wide-ranging exemptions in Clauses 4 to 8 of the Bill are difficult to miss. Clause 3, however, also operates as an exemption from liability, albeit one which is far from obvious to someone who is not a specialist in the complex field of negligence law. The Bill limits "relevant duties of care" to duties that the courts have determined to exist in the context of claims for damages "under the law of negligence". This operates as an exemption because the courts have decided that that there is no duty of care in negligence in a wide range of contexts, including:

- No duty of care in negligence is owed by one participant in an illegal enterprise to another joint participant (the principle of *ex turpi causa non oritur actio).*[4] This argument was used by the defence in *R v. Wacker*[5] by a people-smuggler responsible for the deaths of 58 Chinese immigrants who suffocated to death in the back of his lorry. In that case, the Court of Appeal found that the normal rule, which would have applied in a claim for damages in negligence, should not be applied in the context of the common law offence of gross negligence manslaughter. As this Bill explicitly links the offence to the law of negligence, the court would have no choice but to apply the principle of *ex turpi causa non oritur action*, meaning that the defendant would be able to escape prosecution.

- No duty of care in negligence is owed by a fire brigade to respond to an emergency.[6] This would mean that a fire brigade could not be prosecuted for this offence even in the unthinkable situation that the brigade had failed to respond because all of its on-duty firemen were drunk. Given the exemption in Clause 7, this hidden exemption deriving from the duty of care in negligence test is unnecessary.

- The police owe no duty of care to individual members of the public to apprehend a criminal or investigate crime,[7] or to maintain public order.[8] Even if the exemption in Clause 6 were removed from the Bill, this could mean that a

[4] *Pitts v. Hunt*[1991] 1 QB 24

[5] [2003] Q.B. 1207

[6] *Capital and Counties plc v. Hampshire CC etc.* [1997] 2 All ER 865

[7] *Hill v. Chief Constable of West Yorkshire* [1989] AC 53

[8] *Hughes v National Union of Mineworkers* [1991] 4 All ER 238

police force could not be prosecuted where gross and obvious failings on its part had, for example, allowed a known-murderer to kill again.

Accordingly, even if the express exemptions in the Bill were removed, it would often be impossible to prosecute a public body for the offence because no "duty of care in negligence" would exist.

10. The arguments used by the courts to deny a duty of care in negligence do not exist in the context of the crime of corporate manslaughter. First, the risk of a drain on limited resources would not exist if there were a restriction on the financial penalty that could be imposed on public bodies. Secondly, the availability of other accountability mechanisms could be taken into account by the Director of Public Prosecutions when deciding whether to prosecute the public body for the offence. Finally, the risk of over-caution, arising from the fear of being sued for minor errors, would not exist. There would be no risk of a prosecution for this offence arising from minor mistake – only from serious, *gross* breaches of a duty.

11. The Government has argued that it is necessary to link the offence to a serious failure to perform existing legal duties. It has argued that it would be unfair to prosecute an organisation for failing to do something there was no legal obligation for it to do in the first place. For this reason it has restricted the application of the offence to cases in which a "duty of care in negligence" is owed by the organisation to the deceased. There is some force in this assertion. However, duties of care owed under the law of negligence are not the only duties organisations owed to individuals that could be killed by their activities. Parliament has also imposed a range of duties on organisations by statute. Examples include the duties imposed under the Health and Safety at Work 1974. If a person is killed because an organisation commits a gross breach of such statutory duties, we believe that it should be possible to prosecute them for the offence of corporate manslaughter.

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Amendment 3: The "Relevant Duty of Care" - Limited Categories of Duty (Clause 3)

Clause 3, page 2, lines 17-18, delete "of the following duties" and insert "duty".
Clause 3, page 2, line 18, at end insert "including, but not limited to -"

Effect

12. At present the Bill contains an exclusive list of relationships in which a relevant duty of care might exist.[9] As a result of this amendment, the list of relationships would become indicative rather than exhaustive.

Briefing

13. Even if a "duty of care in negligence" did exist, an organisation could not be prosecuted for this offence if that duty of care did not arise in one of the limited circumstances set out in sub-clause 3(1)(a) to (c). These circumstances include duties owed by employers to employees, by occupiers of premises and in connection with the supply of goods or services or the carrying on of a range of other functions on a commercial basis. Many circumstances in which a person should owe a duty not to kill another by their carelessness are excluded from this list, making a prosecution impossible. The prison service and most policing would not, for example, be covered as the prison service and police are not "supplying" anyone with goods or services. The police or a state-run prison would not fall within the heading of "the carrying on of any other activity" (3(1)(c)(iii) as they are not carrying on an activity for consideration.

14. This exclusive list is again unnecessary and was severely criticised by the Committees that undertook pre-legislative scrutiny:

> "If the Government does decide to continue to base the offence on duties of care in negligence we do not believe the common law concept should be limited by introducing categories where a duty of care must *[sic]* be owed. We

[9] Clause 3(1)(c)(i)-(iii)

> are particularly concerned that the material accompanying the draft Bill did not highlight the use of the work "supply" and its intended purpose of automatically excluding certain activities "provided" by the state."[10]

In its response the Home Office accepted that this list was designed to operate, in part, as a means of exempting certain activities of public authorities.[11] We do not believe that it is either necessary or acceptable to include exemptions in the Bill for the activities of Government and its agencies. Nevertheless, if it is decided to do so, these exemptions should be clear on the face of the Bill, rather than resulting from obscure provisions like Clause 3.

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Amendment 4: Public Policy Decisions and Exclusively Public Functions (Clause 4)

Clause 4, page 3, Stand Part

Effect

15. This would remove the existing exemption for public policy decisions made by public bodies and the performance, whether by public or private bodies, of exclusively public functions.

Briefing

16. The Government has made much of the fact that the Bill removes Crown immunity.[12] It describes this as a recognition that Government also needs to "be

[10] Home Affairs and Work & Pensions Select Committees, *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 108

[11] *The Government Reply to the First Joint Report from the Home Affairs and Work & Pension Committees,* March 2006, Cm 6755, pp.10-11

[12] According to the legal doctrine of Crown immunity, unless Parliament intends otherwise, onerous legislation does not apply to the Crown (on the basis that legislation is made by the Sovereign in Parliament for the regulation of Her subjects, not Herself). The Crown for this purpose is not limited to the monarch personally, but extends to all bodies and persons acting as servants or agents of the

clearly accountable where management failings on its part lead to death".[13] The removal of Crown immunity is an important and welcome step. Sadly, however, Crown immunity has effectively crept back into the Bill in the years since Government first stated its intention to remove it. As the Home Affairs and Work and Pensions Committees explained:

> "We welcome the proposal to remove Crown immunity for the offence of corporate manslaughter. However, we consider that the force of this historic development is substantially weakened by some of the broad exemptions included in the Bill".[14]

The Bill is riddled with exemptions and immunities, most of which apply to the actions of public bodies.[15]

17. Two of the most wide-ranging exemptions in the Bill are contained in Clause 4, which exempts:

- Deaths resulting from a gross breach of a duty of care owed by a public authority in the context of decisions about questions of public policy.
- Deaths resulting from a gross breach of a duty of care owed by any organisation (public or private) in the performance of an exclusively public function, unless relating to employees or the management of property.

18. The Government has argued that the immunities are needed because of "important differences between public bodies and bodies in the private sector". It states that it only intends to create a level playing field "between public and private sectors" in areas where they perform the same roles.[16] The Government has sought to argue that it should be immune from prosecution because the "very broad and often unique responsibilities of public bodies raise more difficult questions for accountability that affect the public"; because public bodies frequently operate under

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Crown, whether in its private or public capacity, including all elements of the Government, from ministers of the Crown downwards.

[13] *Draft Corporate Manslaughter Bill,* para 38

[14] *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 204

[15] The range of exemptions included in the Bill has been much extended since the Committees reached the above conclusion.

[16] *Draft Corporate Manslaughter Bill,* para 18.

a framework of statutory duties which require them to perform functions; because they must often allocate resources between competing public interests with little (if any) option of deciding not to perform particular activities; and because their functions must be carried out in the wider public interest".[17]

19. Liberty is not convinced by these arguments for the following reasons:

- A key element of the rule of law is equality before the law which Dicey, one of the our most eminent constitutional lawyers, described as meaning that: "With us, every official, from the Prime Minister down to a Constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen".[18] Those who are in positions of power are not above the law, but subject to the same law as the rest of us. The inequality of impunity for such bodies is unfair and can bring the law into disrepute: if the Home Office can kill without being punished why shouldn't large companies be able to do likewise?

- Life should be accorded the same degree of legal protection, and the bereaved the same degree of justice, regardless of what kind of body is responsible for a killing and what kind of function they were performing at the time. Article 2 of the European Convention requires "everyone's" life to be protected by law. It does not require "*almost* everyone's" life to be so protected. All life is important and deserves legal protection. The protection you receive from the criminal law should not depend on whose carelessness puts your life at risk (a public body or a private company) or what they are doing at the time.

- It is true that public bodies and agencies perform some functions which other bodies do not; but this does not explain why they should be allowed to perform those functions in a grossly negligent way with impunity. Ensuring that no one is killed by the grossly negligent performance of its duties must be a priority for Government bodies.

- A manslaughter prosecution for a government body or agency could produce wider public benefits in the form of thorough and open scrutiny.

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[17] *The Government Reply to the First Joint Report from the Home Affairs and Work & Pension Committees,* March 2006, Cm 6755, p.21

[18] Dicey, *Law of the Constitution*, 10th edition 1959, 189

- The basic offence will only be committed where there has been "gross negligence", a very high threshold. The Government itself accepts this, explaining:

  > "[t]he new offence is targeted at the most serious management failings that warrant the application of a serious criminal offence ... The offence is to be reserved for cases of gross negligence, where this sort of serious criminal sanction is appropriate. The new offence will therefore require the same sort of high threshold that the law of gross negligence manslaughter currently requires – in other words, a gross failure that causes death".

  Even without exemptions, Government bodies would only be capable of prosecution where guilty of serious management failings, in which case, as the Home Office comments, "serious criminal sanction is appropriate".

- Gross negligence is defined as conduct that "falls far below what can reasonably be expected of the organisation *in the circumstances*" [emphasis added].[19] "The circumstances" would require the court to take account of any particular challenges or difficulties facing public sector bodies, such as limited resources or any dangers inherent in the functions performed.

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Amendment 5: Removal of Exclusively Public Functions Exemption only (Clause 4)

Alternative to Amendment 4

Clause 4, page 3, delete sub-clause (2)
Clause 4, page 3, delete lines 33 to 37

[19] Clause 1(3)(a)

Effect

20. This would amendment would remove the exclusively public function exemption but leave in place the public policy and inspections exemptions.

Briefing

21. As we have explained above, we do not believe that the exemptions in Clause 4 are either necessary or acceptable (paragraph 19). We are, however, particularly concerned about the exemption for deaths caused by a serious failure in the performance of an exclusively public function. First, it is an unacceptably vague and uncertain exemption. It will be exceedingly difficult for the courts to decide what functions "by their nature" require either statutory provision or the exercise of the prerogative (in itself a much-disputed concept). Secondly, this would exclude from the scope of the Bill, a number of matters which, we believe, it should cover. After several months of pre-legislative scrutiny and hearing evidence from a range of experts and stakeholders, the Home Affairs and Work & Pensions Committees concluded:

> "We are very concerned by the exemption for exclusively public functions and are not convinced by the Government's arguments for including in the Bill a blanket exemption for deaths resulting from the exercise of public functions. We do not consider that there should be a general exception under this heading since bodies exercising such public functions will still have to satisfy the high threshold of gross breach before a prosecution can take place, namely that the failure must be one that "falls far below what could be reasonably expected." We do not consider that a private or a Crown body should be immune from prosecution where it did not meet this standard and as a result, a death occurred."[20]

22. One matter which this provision would exclude is deaths in custody, which the Government has acknowledged would be excluded (because keeping people in

[20] Home Affairs and Work & Pensions Select Committees, *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 217

custody can only be done with statutory power). The Government has argued that criminal prosecutions are not necessary in the case of deaths in custody as they are "already subject to rigorous independent investigations through public inquests before juries and through independent reports capable of ranging widely over management issues and publishable post inquest."[21] We do not agree with this position for the reasons set out above. As the Home Affairs and Work & Pensions Committees concluded:

> "We believe that there is no principled justification for excluding deaths in prisons or police custody from the ambit of the offence. The existence of other accountability mechanisms should not exclude the possibility of a prosecution for corporate manslaughter. Indeed public confidence in such mechanisms might suffer were it to do so. We are particularly concerned that private companies running prisons or custody suites, which are arguably less accountable at present, would be exempt. Accordingly, we recommend that, where deaths in prisons and police custody occur, they should be properly investigated and the relevant bodies held accountable before the courts where appropriate for an offence of corporate manslaughter."[22]

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Amendment 6: Military Activities (Clause 5)

Clause 5, page 3, Stand Part

Effect

1. This would remove the exemption for deaths caused in the context of military activities, including operations and training.

[21] *Draft Corporate Manslaughter Bill,* para 22

[22] Home Affairs and Work & Pensions Select Committees, *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 227

Briefing

23. Deaths caused by gross negligence in the course of military operations,[23] when preparing for or supporting such operations and during hazardous training activities are expressly exempted from the offence. The exemption covers the killing of both civilians and members of the armed forces. The following high-profile deaths illustrate why the Ministry of Defence might wish to remain immune to the risk of a criminal prosecution and the public scrutiny that would surround it.

Baha Mousa[24]

"It was dawn when the squad of British soldiers raided the Ibn Al Haitham hotel. Baha Mousa's night shift on the reception desk was coming to an end and his father had just arrived to drive him home. The soldiers ordered Baha, 26, to lie on the black tiled floor of the lobby with six other hotel employees, their hands on their heads. Troops searched the building and arrested the staff, driving them off to a British military base in Basra, southern Iraq … Four days later Baha was dead. When his father, Daoud Mousa … arrived at the British military morgue to identify his son's body he was confronted with a bruised, bloodied and badly beaten corpse."[25]

Deepcut

Between 1995 and 2002 four young soldiers at Deepcut Barracks in Surrey died of gunshot wounds. The families of Sean Benton, 20, Cheryl James, 18, Geoff Gray, 17, and James Collinson, 17, do not accept the official explanation that they killed themselves and have campaigned for a full public inquiry. After a number of lower-level investigations and inquests, repeated examples of bullying and a failure to learn past lessons at Deepcut were uncovered. A review by Nicholas Blake QC found that some recruits had suffered "harassment, discrimination and oppressive behaviour" and commented that "there was a reluctance by trainees to complain against NCOs;

[23] Including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in which members of the armed forces come under attack or face the threat of attack or armed resistance (Clause 5(2))

[24] NB a prosecution for this type of incident would also be impossible due to the limited territorial scope of the Bill.

[25] Extract from *Guardian* reports of incidents leading to Baha Mousa's death: Rory McCarthy, February 21, 2004

those who did complain about a senior NCO were vulnerable to reprisals and received an ineffective response by their immediate superiors".

24. The Government has argued that this exemption is necessary so as not to adversely affect matters of national security or the defence capability and so that the ability of the Armed Forces to carry out, and train for, combat and other warlike operations is not undermined.[26] For the reasons set out above (paragraph 19), we do not believe the exemption to be either appropriate or necessary. The duties of care owed by the armed forces, as defined by law, are already framed by reference to the realities of combat and preparation for combat. Furthermore, the nature of the necessarily dangerous activities undertaken by the armed forces would already be recognised by the definition of "gross negligence". The Bill expressly states that a breach of that duty will only be "gross" where, "*in the circumstances"*, it falls far below what could reasonably be expected. Even if one assumed that the exemption were necessary or appropriate, at present it is too widely drawn. We are particularly concerned that the inclusion of "preparation for any combat operation" might include elements of basic training. The Committees that undertook pre-legislative scrutiny shared these concerns, concluding that the exemption should not be so widely drawn and recommending that preparation for operations should be excluded.[27]

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Amendment 7: Military Activities – Tightening of Exemption (Clause 5)
Alternative to Amendment 6

Clause 5, page 4, line 2, delete "in preparation for, or"

Effect

25. This would remove preparation for military operations from the scope of the exemption in Clause 5 of the Bill.

[26] *Draft Corporate Manslaughter Bill,* para 40

[27] Home Affairs and Work & Pensions Select Committees, *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 227

Briefing

26. While the Committees undertaking pre-legislative scrutiny of the Bill, considered that some exemption for military operations was necessary, they were concerned about the current scope of the exemption:

> "Although we recognise the unique position of the armed forces, we consider that the exemption is drawn too widely. We are concerned that "preparation" for combat operations would encompass routine training and believe that such a wide exemption cannot be justified. We therefore recommend that the words "in preparation for" be removed … so that the exemption is restricted to combat operations and directly related to such operations."[28]

While we do not agree that the exemption is necessary (paragraph 21 above) we do agree that the wording "in preparation for" is particularly worrying. The argument for its removal is even more relevant now than when the Select Committees undertook pre-legislative scrutiny because necessarily dangerous training is now expressly exempt in the real Bill.

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Amendment 8: Policing, Law Enforcement and Emergency Services (Clauses 6 and 7)

Clause 6, page 4, Stand Part
Clause 7, page 5, Stand Part

Effect

27. This would remove the broad exemptions for policing, law enforcement and emergency services.

[28] Home Affairs and Work & Pensions Select Committees, *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 239

Briefing

28. Clauses 6 and 7 contain three new exemptions which were not contained in the draft Bill. These include:

- First, a blanket exemption for deaths of civilians caused by the gross negligence of the police or other public authorities in the performance of policing or law-enforcement activities.
- Secondly, an exemption for the killing of members of the public and employees of a police force which occurs in connection with operations or training for dealing with terrorism, civil unrest or serious public disorder in which the police come under attack or face the threat of attack or violent resistance.
- Thirdly, where deaths are caused by the emergency services (widely defined) when responding to an emergency. This exemption only applies where a member of the public is killed. It does not cover the killing of employees.

It would appear that the second exemption was specifically designed to deal with incidents like the killing of Jean Charles de Menezes.[29]

29. When the Home Affairs and Work & Pensions Select Committees considered the draft Bill, which did not include these exemptions, they concluded:

> "We are concerned by the possibility that the inclusion of police and fire operational activities might lead to a culture of risk averseness. However, this could be countered by effective education. We believe that the Bill should be drafted so that emergency services' operational activities are only liable for the offence in cases of the gravest management failings."[30]

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[29] On Friday 22nd July 2005, Jean Charles de Menezes was shot seven times in the head by plain-clothes policemen on a tube train at Stockwell station in South London. Jean was in no way involved in any terrorist activity. Jean's family were not informed about his killing until over 24 hours after it happened and the metropolitan police immediately began briefing the press with 'off the record' statements saying that Jean was a terrorist, that he was acting suspiciously, that he was wearing a bulky coat and that he was challenged but refused to co-operate. All of these statements have turned out to be false. As a result of demands by Sir Iain Blair, the Independent Police Complaints Commission (IPCC) investigation into the killing was delayed for 6 days. Many questions about how this mistake was allowed to happen and about the whereabouts of important evidence remain unanswered.

[30] Home Affairs and Work & Pensions Select Committees, *Draft Corporate Manslaughter Bill*, 2005-06, HC 540-I, para 245

We agree that liability for the offence should only arise from the "gravest of management failings". An organisation should not be prosecuted for this offence where the failings were minor. We do not, however, believe that the additional exemptions are necessary given the already restrictive scope of the basic offence and the requirement of *gross* negligence (paragraph 19). As the Committees concluded, any danger of risk-averseness should be addressed by educating those performing these important services about the very limited scope of the offence and by ensuring that they do not commit grave management failings which cause death.

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Amendment 9: Tightening Exemptions for Policing and Law Enforcement (Clause 6)

Alternative to Amendment 8

Clause 6, page 4, line 27, delete "in preparation for, or"
Clause 6, page 4, line 37, delete sub-clauses (3) and (4)

Effect

30. This amendment would retain the exemption for police forces or other public authorities in respect of operations for "dealing with terrorism, civil unrest or serious public disorder in which the police come under attack or face the threat of attack or violent resistance". It would, however, remove the more general exemption in relation to all other "policing and law-enforcement activities".

Briefing

31. At present there are two limbs to the exemption for policing and law-enforcement activities in Clause 6:

- First, a blanket exemption for deaths of civilians caused by the gross negligence of the police or other public authorities in the performance of policing or law-enforcement activities.

- Secondly, an exemption for the killing of both members of the public and employees of a police force which occurs in connection with operations for dealing with terrorism, civil unrest or serious public disorder in which the police come under attack or face the threat of attack or violent resistance.

For the reasons set out above we do not consider either of these exemptions to be necessary or acceptable.

32. We are, however, particularly concerned about the general exemption for law-enforcement activities and the fact that the exemption for dangerous operations also covers preparation for those operations. A blanket exemption for deaths caused by the gross negligence of any body involved in law-enforcement is unacceptable. This would be wide enough to cover deaths arising from gross negligence in the policing of low-level crime. For example, imagine that a police force knowingly and consistently ignores guidance that its officers should be trained in the use of restraining techniques (it is widely known that some techniques may kill if used improperly). To prevent their running away, a suspected shop-lifter is restrained using a dangerous technique and is killed. The individual officer had received no training and, individually, could not fairly be held responsible for the death. As a result of this exemption, there would be no possibility of prosecuting the police force for failing to give the necessary training.

33. The extension of the other, more targeted, exemption to cover "preparation" for dangerous operations could cover deaths arising from routine training which could be considered necessary preparation for a dangerous operation. Imagine, for example, the following scenario: A police force is repeatedly warned that a barrier or sign must be erected at a firing range to prevent officers walking between other officers practising their shooting and their targets. Despite the warnings, nothing is done. An officer is killed when he unknowingly walks into the line of fire. As a result of this exemption, the police force could not be prosecuted for its consistent and serious failures.

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Amendment 10: Child Protection and Probation (Clause 8)

Clause 8, page 6, Stand Part

Effect

34. This would remove the exemption for local authorities or other public bodies where they are grossly negligent in the performance of their child-protection or probation functions.

Briefing

35. The Bill contains another new immunity, not included in the draft. This covers deaths arising from gross negligence in the performance of functions to protect children from harm or in relation to the activities of probation services. For the reasons cited above (cf paragraph 19), we believe this exemption to be neither acceptable nor necessary. The following cases illustrate the kinds of situations where the exemption may apply.

Victoria Climbie

In 2000 Victoria Climbie was tortured to death by her great-aunt, Marie Therese Kouao, and the woman's boyfriend Carl Manning. When Victoria died she had 128 separate injuries on her body, including cigarette burns, scars where she had been hit by a bike chain and hammer blows to her toes. She was also forced to sleep in a bin liner in the bath at the home in Tottenham, north London, where she lived with Kouao and Manning. Victoria was seen by dozens of social workers, nurses, doctors and police officers before she died but all failed to spot and stop the abuse, as she was slowly tortured to death. She was taken into hospital with injuries on a number of occasions and calls were made to her local authority warning of her abuse. Lord Laming's public inquiry into the case concluded that the failings by the agencies involved were a "disgrace".

Naomi Bryant

In August 2005 Naomi Bryant was stabbed to death in her home in Winchester. Her killer, Anthony Rice, was freed on licence nine months before and had been serving a life sentence for violent offences against women. An inquiry by HM Inspectorate of Probation concluded that Mr Rice should not have been released. The report catalogued a "string of deficiencies, in the form of mistakes, misjudgements and miscommunications at various stages throughout the whole process of this case."

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Amendment 11: DPP and Public Interest Considerations (Clause 16)

Clause 16, page 10, line 39, at end insert "and public interest considerations"

Clause 16, page 11, after line 2, insert-

"(2) When deciding whether it is in the public interest to prosecute a servant or agent of the Crown for the offence of corporate manslaughter the Director of Public Prosecutions shall take account of the following factors:

(a) the availability of other mechanisms for holding the body or individual representatives of the body to account for the management or organisational failures causing death, including but not limited to accountability to Parliament, inquests and public inquiries; and

(b) the likely impact of a prosecution on the availability and timeliness of other accountability mechanisms.

Effect

36. This amendment would require the Director of Public Prosecutions to take account of other accountability mechanisms when deciding whether to prosecute a Crown body for the offence of corporate manslaughter.

37. The Government has sought to justify the various immunities in the Bill on the basis that other accountability mechanisms are available and would be more appropriate than criminal prosecution. These include Ministerial accountability to Parliament, liability under the Human Rights Act, public inquiries and other independent investigations, judicial review and ombudsmen. This argument is not entirely convincing as other accountability mechanisms will not exist in all of the situations excluded from the scope of this offence (for example gross negligence in the running of private prisons).

38. We do, however, accept that in some cases a corporate manslaughter prosecution may not be the most timely and/or appropriate form of accountability. The public interest in a promptly held inquest or inquiry which reveals how a terrible accident occurred and how similar incidents may be prevented in the future may, for example, outweigh the public interest in a prosecution. This does not, however, mean that a prosecution should be excluded as a possibility. A victim's family may feel that they cannot move on without a prosecution or the Government may refuse to allow a public inquiry to take place. Instead of wide-ranging exemptions for this reason, we propose that the Director of Public Prosecutions, when deciding whether it is in the public interest to prosecute a public body for the offence, should take account of other accountability mechanisms and the impact of a prosecution thereon.

39. It has never been the rule in this country that every criminal offence must automatically be prosecuted. For this reason, in each case, the Crown Prosecutor must consider the public interest in going on with a prosecution and balance factors for and against prosecution carefully and fairly before coming to a decision. The public interest factors that can affect the decision to prosecute will vary from case to case. Relevant factors would normally include matters such as the seriousness of the offence, the identity of the victim and the victim's wishes. Such factors should continue to be relevant, alongside the factors specified in this amendment.

Jago Russell, Liberty