



## **Corporate Manslaughter and Corporate Homicide Bill**

**Suggested amendments for House of Lords  
Report stage – Deaths in custody**

**January 2007**

## **Introduction and summary**

1. The following set of amendments is supported by JUSTICE, the Prison Reform Trust, Liberty and INQUEST. It is designed to ensure that deaths in custody are not excluded from the ambit of the Corporate Manslaughter and Corporate Homicide Bill.
2. JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists.
3. The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, Government and officials towards reform.
4. Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.
5. INQUEST is the only charity in England and Wales that works directly with the families and friends of those who die in custody. This includes deaths at the hands of state agents and in all forms of custody; police, prison, young offender institutions, secure training centres and immigration detention centres. We provide a free, confidential advice service to bereaved people and conduct policy and Parliamentary work on issues arising from the deaths and their investigation.
6. For further information, Parliamentarians may contact:

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## **Amendments**

### **Clause 2**

**Page 2, line 34, at end insert –**

**“(d) a duty owed to anyone held in custody”**

**Page 3, line 18, at end insert –**

**““custody” includes being held in prison, secure mental healthcare facilities, secure children’s homes, secure training centres, immigration removal centres, court cells and police cells, and being subject to supervision by court, prisoner and detainee escort services;”**

### **Clause 3**

**Page 3, line 43, leave out “or (b)” and insert “, (b) or (d)”**

### **Clause 5**

**Page 5, line 12, leave out “or (b)” and insert “, (b) or (d)”**

## **Briefing**

7. JUSTICE, the Prison Reform Trust, Liberty and INQUEST are particularly concerned at the continuing exclusion from the Corporate Manslaughter and Corporate Homicide Bill of many deaths in custody.
8. The government is obliged, under Article 2 of the European Convention on Human Rights (ECHR), to establish a legal framework in which those responsible for homicides may be brought to justice, which acts as a deterrent against the commission of such offences. The European Court of Human Rights has emphasised

that '[i]n the context of prisoners...persons in custody are in a vulnerable position and...the authorities are under a duty to protect them.'<sup>1</sup>

9. Between 1995 – 2005 INQUEST's casework and monitoring service has highlighted over 2000 deaths in police and prison custody. Many of these deaths have raised issues of negligence, systemic failures to care for the vulnerable, institutional violence, racism, inhumane treatment and abuse of human rights. Despite a pattern of cases where inquest juries have found overwhelming evidence of unlawful and excessive use of force or gross neglect, no police or prison officer has been held responsible, either at an individual level or at a senior management level, for institutional and systemic failures to improve training and other policies. This is even the case when inquests return 'unlawful killing verdicts'. Since 1990, 10 'unlawful killing' verdicts have been returned by inquest juries but none of them has led to a successful prosecution.<sup>2</sup>
  
10. While inquests can provide a verdict and the coroner can suggest remedial measures under rule 43 of the Coroners' Rules 1984, these recommendations have no binding force. The government points to public inquiries as an alternative route of accountability – but it refused to hold public inquiries into the deaths of both Zahid Mubarek and Joseph Scholes. In both cases,<sup>3</sup> the government fought the families' attempts to have a public inquiry held in the civil courts. Without a legal victory by the family, the Zahid Mubarek Inquiry<sup>4</sup> would not have been held. Without a similar verdict in the ongoing *Scholes* case, it is very unlikely that a public inquiry will be held. An inquiry – for which a family have had to fight – held years after a death, is in any event not sufficient in itself to provide an effective deterrent against gross negligence causing deaths in custody. The purpose of an inquest, and of investigations by bodies such as the Independent Police Complaints Commission and Prisons and Probation Ombudsman, is not to determine liability.<sup>5</sup> The Joint Committee on Human Rights has said that:<sup>6</sup>

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<sup>1</sup> *Keenan v UK*, App. No. 27229/95, judgment of 3/4/2001, ECtHR (Third Section), para. 91.

<sup>2</sup> [www.inquest.org.uk](http://www.inquest.org.uk)

<sup>3</sup> Cf *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51 ; *R (Scholes) v Secretary of State for the Home Department* [2006] EWCA Civ 1343.

<sup>4</sup> [www.zahidmubarekinquiry.org.uk](http://www.zahidmubarekinquiry.org.uk).

<sup>5</sup> Although an IPCC investigation may result in the IPCC or police referring the case to the CPS.

<sup>6</sup> Joint Committee on Human Rights: Twenty-Seventh Report, session 2005-2006.

it is precisely in these sorts of cases that the case-law of the European Court of Human Rights stresses the inadequacy of other mechanisms of accountability and the importance of the deterrent effect of the judicial system in place and the significance of the role that system is required to play in preventing violations of the right to life.

11. We agree with the Home Affairs and Work and Pensions Committees that there is 'no principled justification for excluding deaths in prison or police custody from the ambit of the offence'.<sup>7</sup> We also agree with the Independent Police Complaints Commission (IPCC)<sup>8</sup> and the joint report from the Home Affairs and Work and Pensions Committees that having the option of a corporate manslaughter prosecution is important to maintain public confidence. We therefore suggest the above set of amendments in order to ensure that those in custody are properly protected from gross negligence causing death.
12. The first amendment above would ensure that deaths in custody are within the ambit of the offence by adding a separate category to the types of 'relevant duty of care' in clause 2 of the Bill: a 'duty owed to anyone held in custody'. 'Custody' is defined in the second amendment to include not only prisons, but also other places of detention such as immigration removal centres, police cells and court cells, and to those being escorted, for example from court to prison.
13. The third amendment above would ensure that the 'exclusively public function' exemption in subclause 3(2) of the Bill would not exclude deaths in custody from the ambit of the offence. The fourth amendment would ensure that the exception for policing and law enforcement activities in subclause 5(3) would also not apply to deaths of those held in custody.
14. It should be borne in mind that if the Bill was amended as we suggest, not every death in custody could lead to a corporate manslaughter prosecution. For a corporation to be convicted, the requirements of clause 1 would have to be satisfied: there must have been a *gross breach* of a relevant duty of care. It should also be

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<sup>7</sup> *Home Affairs and Work and Pensions Committee: Draft Corporate Manslaughter Bill*, First Joint Report, 20 December 2005, HC 540-I.

<sup>8</sup> [http://www.ipcc.gov.uk/ipcc\\_response\\_corporate\\_manslaughter.pdf](http://www.ipcc.gov.uk/ipcc_response_corporate_manslaughter.pdf)

emphasised that these amendments would not impose criminal liability upon individuals, but would merely apply the corporate offence to deaths in custody.

**JUSTICE**  
**Prison Reform Trust**  
**Liberty**  
**INQUEST**

**January 2007**