



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

REFORMING THE LAW ON INVOLUNTARY MANSLAUGHTER: THE GOVERNMENT'S PROPOSALS

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Foreword by the Home Secretary



I am pleased to introduce the Government's proposals for the reform of an important and sensitive area of the law, technically known as "involuntary manslaughter" that is, where an individual kills as a result of some blameworthy act on their part but without actually intending to cause death or serious injury.

It is generally acknowledged that the present law in this area is unclear – in some respects it covers too wide a range of criminal behaviour, and, where corporations are concerned, it is ineffective. Such defects can cause real problems and, indeed, distress, particularly where they mean that the criminal law is unable to convict anyone, whether an individual or a corporation, in circumstances where deaths have occurred and where there is a public perception that those whose acts or failures have contributed to the deaths have not been held fully accountable. The law needs to be clear and effective in order to secure public confidence.

This paper is based on the Law Commission Report No.237 *Legislating the Criminal Code: Involuntary Manslaughter* which the Government accepts in principle and which has been widely

welcomed. I would like to express my thanks to the Law Commission for their contribution to this work - not only for the report itself but also for their contribution to the inter-departmental working group which we set up to consider the Commission's report.

As we have come to expect, the Law Commission's proposals were detailed and well thought out, being the product of their own earlier consultation exercise. The inter-departmental working group was concerned to examine how the proposed offences would work in practice and to deal with any implications which the Law Commission might not have had the opportunity to consider.

We have accepted the vast majority of the Law Commission's proposals. This paper concentrates on those areas which are likely to be more contentious or where we have taken a different view from the Law Commission. In a number of areas we seek comments on possible options, to help us to reach a final view.

We wish to clarify and rationalise the existing law relating to individual involuntary homicide. We agree with the Law Commission that the law relating to corporate liability for involuntary manslaughter is in need of radical reform. In this area, as in the others mentioned in this paper, our proposals raise important and difficult issues of policy, principle and practice.

We would welcome any comments on any aspect of this paper.



Rt. Hon Jack Straw MP
23 May 2000

1. INTRODUCTION

1.1 At present in English law there are two general homicide offences - murder and manslaughter¹. The most serious, murder, requires proof of an intention to kill or cause serious injury. If there are mitigating circumstances, such as provocation or diminished responsibility, then the offence is one of manslaughter - often referred to as “voluntary manslaughter”. However, if someone kills but did not intend to cause death or serious injury but was blameworthy in some other way, then this is often referred to as “involuntary manslaughter”.

1.2 This paper is only concerned with the Government’s proposals on changing the law on involuntary manslaughter in England and Wales - these proposals are not intended to affect the law on either murder or voluntary homicide; nor does it deal with the offences of causing death by dangerous driving or causing death by careless driving while under the influence of drink or drugs under the Road Traffic Act. Once the responses to this consultation exercise have been received, separate consideration will be given to extending these proposals to Northern Ireland. The reform of the law in Scotland on involuntary homicide, including any proposal for the creation of an offence of corporate killing in Scotland, is an issue which the authorities there would have to consider separately.

1.3 The proposed reform is therefore aimed only at that area of the criminal law in England and Wales used to prosecute those who kill when they do not intend to cause death or serious injury but where they have (i) committed a crime which was only intended to result in some minor injury but which, unforeseeably, led to death or (ii) been extremely careless or negligent or (iii) reckless as to whether death or serious injury occurred.

The need for reform

1.4 Involuntary manslaughter is one of the most frequently prosecuted common law offences and has not been the subject of any form of statutory intervention. It has been the subject of much controversy; for example, there has been great dispute about what degree of fault has to be shown to incur criminal liability for gross negligence manslaughter i.e. where a person causes death through extreme carelessness or incompetence. In the case of *Bateman*², the Court of Criminal Appeal considered that the threshold was that the defendant’s negligence was *so gross* that it showed a disregard for the life and safety of others as to amount to a crime and deserved punishment. This approach was uncertain and circular so that the courts began to regard *recklessness* as a description for the high degree of negligence required. More recently, the House of Lords resiled from this and has explained that *gross negligence* was the appropriate test. This has left many other problems, such as that the present test is circular as the jury has to be directed to convict the defendant for the crime if they think his conduct was “criminal”.

1.5 A second problem with the present law on involuntary manslaughter is its breadth. It encompasses many different types of wrongful behaviour. As Lord Chief Justice Lane said in 1992 it “ranges in gravity from the borders of murder right down to those of accidental death”.³ This has led to problems for judges who have difficulty in determining the appropriate sentence for an offence which is so wide and who are unable to receive the jury’s guidance on matters that are crucial to the severity of the penalty deserved, such as the accused’s foresight of the risk of causing death. It can also lead to problems for the public in understanding why the judge in any given case has awarded the particular sentence.

¹ There are in addition specific statutory homicide offences aimed at particular situations, such as the offence of infanticide.

² (1925) Cr App R 8

³ In the case of *Walker*(1992) 13 Cr App R (s) 474,476

1.6 There is a powerful argument for defining criminal offences in terms of narrow bands of conduct so that the judge can have the guidance of the jury on important factual matters, such as intention or awareness of risk. The present offence is too large and has led to problems for judges who have difficulty in determining the appropriate sentence for an offence which is so wide and problems for the public in understanding why, in any given case, the judge awarded the particular sentence. It is also arguable that it is inappropriate that the same label should apply to behaviour which is very close to murder and also to death resulting from carelessness.

1.7 The Law Commission also took the view that it was wrong in principle that a person should be convicted for causing death when the offender was only aware of a risk of some injury. The Government is less convinced of the merits of this argument and the reasons for this are explained in Chapter 2.

1.8 In addition, the law relating to corporate liability for involuntary manslaughter has become the subject of growing public concern because of the failure of the general criminal law to deal effectively with companies whose actions or inactions have been a cause of a disaster. Because of the way the law in this area operates, there have been only three successful convictions of a company for involuntary manslaughter. A more detailed explanation of the need for reform in this area of the law is set out in Chapter 3.

The Law Commission Report No. 237: Involuntary Manslaughter

1.9 The Law Commission's proposals for the reform of the law on involuntary homicide, on which this consultation paper is based, is set out in their Report No. 237 *Involuntary Manslaughter*. The Law Commission's report was itself preceded by the Commission's own 1994 Consultation Paper No.135, *Criminal Law: Involuntary Manslaughter*. In their Consultation Paper the Law Commission set out their provisional proposals, based partly on work previously undertaken by the Criminal Law Revision Committee and altered those proposals in the light of the responses to their consultation exercise.

1.10 Following the response to their Consultation Paper, the Law Commission presented their considered conclusions on reforming the law on unintentional killing in their Report No. 237: *Involuntary Manslaughter*, published in 1996. In addition to a detailed analysis of why the law needs reforming and the issues involved, it included a draft Criminal Law Bill of 11 clauses and a schedule (at Annex 1 of this paper). The Law Commission recommended:

- the abolition of the offence of involuntary manslaughter;
- its replacement by two new offences of "reckless killing" and "killing by gross carelessness"; and
- the creation of a special offence of "corporate killing", broadly corresponding to the individual offence of killing by gross carelessness.

The Government response

1.11 The Law Commission's report has been widely welcomed and the Government has considered their proposals on involuntary homicide with great care. An inter-departmental working group of officials and lawyers, including a representative from the Law Commission, was set up to consider the proposals in detail. It was particularly concerned to examine how the proposed offences would work in practice and deal with any implications of the proposals which the Law Commission might not have had the opportunity to consider. As is made clear later in this paper, the Government has accepted the vast majority of the Law Commission's proposals which therefore form the basis of this report. The Government is greatly indebted to the Law Commission for the careful and painstaking work they have done on this subject, the principled way they have approached it and the assistance they have continued to offer.

The aim of this Paper

1.12 This Paper is not intended to cover in detail all the areas covered by the Law Commission's report on involuntary manslaughter. Where we have not commented on particular parts of the Law Commission's proposals, it may be taken that the Government agrees with both the rationale

and conclusions provided by the Commission in their report. The purpose of this Consultation Paper is to set out in detail those areas where the Government has come to a different conclusion to the Law Commission or where we consider that a further explanation of what we propose is desirable and to invite comments on our proposals. The Government recognises that reforming the law in this area can raise important questions of policy, principle and practice and we wish to ensure that the implications of our proposals are fully appreciated and that all those affected have an opportunity to contribute their views.

Comments

The Government would welcome views on any aspects of the proposals, whether on matters of general principle and policy or on the details of the proposals. Specific questions are asked at certain points in the text: these are not exclusive but indicate that views are sought on these particular issues. The Government would particularly welcome views on the likely practical consequences of the proposed changes.

Any telephone inquiries about the content of this paper should be addressed to Edward Pegg in the Home Office, Sentencing and Offences Unit on 020 7273 3123.

Responses should be sent to:

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50 Queen Anne's Gate
London SW1H 9AT

to reach him by 1 September 2000.

Unless confidentiality is requested, it will be assumed that responses can be made available to others.

Requests for further copies of this document should be directed in the first instance to Gerry Ranson on 020 7273 2291.

This document is also available on the Internet at <http://www.homeoffice.gov.uk/index.htm>

2. SCOPE OF THE PROPOSALS - RECKLESS KILLING & KILLING BY GROSS CARELESSNESS

2.1 According to the Law Commission, at present there are three different ways of committing “involuntary manslaughter”. The first, described as “unlawful act manslaughter” is where the person who causes the death was engaged in a criminal act which carried with it the risk of some injury to another person. The second is described as “gross negligence manslaughter” where a person causes death through extreme carelessness or incompetence. The third is where a person is aware that their conduct involves a risk of causing death (or probably serious injury) and unreasonably takes that risk.

2.2 The Law Commission set out in their Report No. 237: *Involuntary Manslaughter* the reasons why there are problems with the law at present (paragraphs 1.4-1.8 refer). The most significant problem is that having one offence of (involuntary) manslaughter to cover such a wide range of mischief presents judges with significant problems, particularly when determining what the appropriate sentence should be in any given case. The Law Commission therefore proposed the creation of two separate offences of unintentional killing i.e. “reckless killing” and “killing by gross carelessness” with the main difference being the fault elements.

Reckless killing

2.3 A person commits reckless killing if:

- his or her conduct causes the death of another;
- he or she is aware of a risk that his or her conduct will cause death or serious injury; and
- it is unreasonable for him or her to take that risk having regard to the circumstances as he or she knows or believes them to be.

Killing by gross carelessness

2.4 A person commits killing by gross carelessness if:

- his or her conduct causes the death of another;
- a risk that his or her conduct will cause death or serious injury would be obvious to a reasonable person in his or her position;
- he or she is capable of appreciating that risk at this material time (but did not in fact do so)

and either

- his or her conduct falls far below what can reasonably be expected in the circumstances; or
- he or she intends by his or her conduct to cause some injury, or is aware of, and unreasonably takes, the risk that it may do so, *and* the conduct causing (or intended to cause) the injury constitutes an offence.

2.5 The Government accepts that the width of the present offence of involuntary manslaughter does cause problems on sentencing and it is inappropriate that types of conduct which vary widely in terms of fault should all carry the same descriptive label. We accept that an offence resulting from a failure to appreciate the consequences of an action is less culpable than acting in full knowledge of a risk.

The Government therefore accepts the Law Commission’s proposals in respect of the offences of reckless killing and killing by gross carelessness.

2.6 The Law Commission also took the view that it was wrong in principle that a person should be convicted for causing death when the offender was only aware of a risk of some injury.

The merits of this argument are, however, less straightforward and are discussed further under the next section headed “A Proposed Third Offence”.

A PROPOSED THIRD OFFENCE

Should liability for involuntary homicide exist where the intention was only to cause some injury but resulting death was unforeseeable?

Present law

2.7 At present under the law on “dangerous and unlawful act manslaughter” a person who intends or is reckless as to whether he commits what would otherwise be a relatively minor assault will be guilty of manslaughter if the victim dies as a result, even though death was quite unforeseeable. So, if for instance, in the course of a fight A gives B a small cut - but A had no way of knowing B had haemophilia - and B then dies, under the law at present A would be liable under “dangerous and unlawful act manslaughter”.

Position of the Law Commission in Report No. 237

2.8 As previously noted the Law Commission were very concerned that the present law allows a person to be convicted of an offence carrying a maximum penalty of life imprisonment not because of his mental intention but because of an “unlucky” event. The Law Commission considered that it was wrong in principle for the law to hold a person responsible for causing a result that he did not intend or foresee, and which could not even have been foreseeable by a reasonable person observing his conduct.

2.9 The Law Commission therefore took the view that an accused who is culpable for causing some harm is not sufficiently blameworthy to be held liable for the unforeseeable consequence of death. Using the example cited above, under the Law Commission’s proposals because death was unforeseeable, A could only be charged with a comparatively minor non-fatal offence.

2.10 In their report the Law Commission acknowledged that responses to their own Consultation Paper were divided on this issue. The Government is concerned that the Law

Commission’s approach would mean that behaviour which may be regarded as seriously culpable because it involves intentional or reckless criminal behaviour which results in death, would no longer attract an appropriate charge. It might be viewed as unacceptable if the law permitted only a charge of assault where that assault had in fact resulted in death. The Government considers that there is an argument that anyone who embarks on a course of illegal violence has to accept the consequences of his act, even if the final consequences are unforeseeable. This is in line with our proposals contained in our Consultation Paper *Violence : Reforming the Offences Against the Person Act 1861* where we said that offences should be based on motivation and outcome. In addition, perhaps liability in such circumstances should exist, as being essential for the protection of the public.

A third offence

2.11 The Government therefore considers that there may be a need for an additional homicide offence to cover a situation where:

- a person by his or her conduct causes the death of another;
- he or she intended to or was reckless as to whether some injury was caused; and
- the conduct causing, or intended to cause, the injury constitutes an offence.

2.12 Furthermore the Government considers that any additional offence ought to cover recklessness, not least because the Law Commission considered that this type of conscious risk taking, which involved the possibility of serious injury or death, was the most reprehensible form of homicide, on the very borders of murder. Moreover, if liability were to arise in such circumstances it would appear to be in line with the Law Commission’s report and the Government’s proposals on Offences Against the Person which makes individuals liable for causing intentional or reckless injury to another. However, the Government sees no case for extending the offence to instances where death is caused by someone who, through gross carelessness, causes someone to be injured and, totally unforeseeably, death results.

2.13 The Law Commission have made it clear that they are against any such offence in principle because it would not be linked to what a person

could possibly have foreseen. They argue that people should not be punished for “the lottery effect”.

The Government invites views on whether there should be an additional involuntary homicide offence covering those situations where a minor injury is all that was intended but death, which was unforeseeable, occurs.

RELATIONSHIP WITH FATAL DRIVING OFFENCES

2.14 The Law Commission did not consider that their proposals should affect the offences of causing death by dangerous driving, or causing death by careless driving while under the influence of drink or drugs, under the Road Traffic Act (RTA), so that a person could, as at present, be charged under the RTA offences or under the general law on involuntary homicide. Following the Road Traffic Law Review chaired by Dr (now Lord) Peter North in 1988, thorough consideration was given to offences relating to death on the road and, in particular, whether there should be an offence of causing death by careless driving. The Government recognises that this is an issue which causes considerable concern. Legislative changes were made in the Road Traffic Act 1991 and the Government has since commissioned a major research project to establish the extent to which the criminal justice system has given proper effect to the changes Parliament had intended. Once the conclusions of that research are known later this year, the Government will consider whether any further change is needed.

The Government agrees with the Law Commission’s approach and will ensure that the law on fatal driving offences remains unaltered by the changes proposed in this Paper but will consider separately whether any changes are needed to those offences.

MAXIMUM SENTENCES

Reckless killing

2.15 The Law Commission recommended that the offence of reckless killing, where the offender is aware that an action involves a risk of causing death and it was unreasonable for him to take that

action having regard to the circumstances as he knew or believed them to be, should attract the same maximum penalty as at present i.e. life imprisonment. The Government accepts this recommendation.

Killing by gross carelessness

2.16 The Law Commission took the view that killing by gross carelessness is less serious than reckless killing because, unlike reckless killing, this offence would be committed in circumstances where the offender did not appreciate at the time that there was a risk of death or serious injury. The Commission therefore considered it ought to attract a lesser determinate sentence of between 10 and 15 years. Based on their analysis of several Court of Appeal decisions on involuntary manslaughter the Law Commission suggested a 14 year maximum might be appropriate but came to no final conclusion.

2.17 The Government accepts the Law Commission’s view that the offence of killing by gross carelessness warrants a maximum sentence short of life imprisonment. The best parallel appears to be those offences of causing death by dangerous driving and causing death while under the influence of alcohol or drugs, which both carry a maximum penalty of 10 years imprisonment. The Government is anxious that there should be consistency in sentencing. As the proposed offence of killing by gross carelessness and causing death by dangerous driving use very similar language, if the maximum sentences were different it could lead to the courts awarding different sentences for essentially the same wrongdoing, which would clearly be undesirable. The Government therefore proposes a maximum penalty for the offence of killing by gross carelessness of 10 years imprisonment.

Death resulting from intentional/reckless causing of minor injury

2.18 Paragraphs 2.7 to 2.13 set out the arguments for and against an offence where death results but was unforeseeable and all the offender intended to cause or recklessly caused was some minor injury.

2.19 Under existing legislation, courts have imposed long determinate sentences (sometimes in excess of 5 years) in cases where a relatively

minor assault has resulted unexpectedly in death. It can be argued that the proposed third homicide offence is more serious than killing by gross carelessness because - unlike the latter - in this instance the offender must have intentionally or recklessly have caused some injury to another. In other words there might be some circumstances where this conduct is as blameworthy or more blameworthy than killing by gross carelessness. If this view is accepted, the appropriate maximum penalty would be approximately the same as the proposed maximum for killing by gross carelessness i.e. 10 years. In practice the maximum penalties the courts have actually imposed for offences which would fall within the third homicide offence are in the range of 10 to 14 years.

2.20 However, this offence is similar to that in clause 3 of the Government's draft Offences Against the Person (OATP) Bill of intentionally or recklessly causing injury to another with the totally unforeseen consequence that death results. While the Law Commission have made it clear why they do not consider there should be a third offence at all (see paragraph 2.13 above), they have commented that if there were to be one, they believe the maximum penalty should be five years

- the maximum for the appropriate non-fatal offence. The Government is inclined to accept the proposition underlying the Law Commission proposals that the degree of culpability is, and should be, less in circumstances where the outcome could not have been foreseen. However, it should be borne in mind that the third offence may relate to situations where there was an intentional act, rather than a careless act as in killing by gross carelessness. In some circumstances an intentional act which unforeseeably results in death e.g. an assault may be viewed as more culpable than a grossly careless act which results in death. The Government therefore considers that the maximum penalty for the offence of causing death when the only intention was to cause minor injury should be between 5 and not more than 10 years imprisonment - possibly 7 years.

Are the proposed maximum penalties appropriate? In particular, is the proposed maximum penalty of 10 years for killing by gross carelessness appropriate? Should the maximum sentence where death results but the offender was reckless or intended only minor injury be between 5 and 10 years?

3. SCOPE OF THE PROPOSALS - A NEW OFFENCE OF CORPORATE KILLING

1. CORPORATE LIABILITY, THE NEED FOR REFORM AND THE LAW COMMISSION'S PROPOSALS

The continuing need for successful business corporations

3.1.1 In considering the potential liability of corporations in the criminal law, the Government has borne in mind the reason why corporations were established in the first place. The vital success and benefits that have been brought to the country through incorporated organisations and the continuing need for the successful operation of commercial organisations - especially companies incorporated under successive Companies Acts - to be able to function as corporations. In particular, in civil law, the great advantage of incorporation has been and is that it allows for a liability limited to the assets held by the corporation itself, which is considered to be a separate legal entity, from those individuals who run it.

Present position on corporate liability for involuntary manslaughter

3.1.2 The limited liability provided by incorporation does not at present protect individuals from criminal liability, nor will the proposed new offence of corporate killing of itself either increase or decrease individual liability. It will merely provide a different basis of criminal liability for corporations.

3.1.3 The governing principle in English law on the criminal liability of companies is that those who control or manage the affairs of the company are regarded as embodying the company itself. Before a company can be convicted of manslaughter, an individual who can be "identified as the embodiment of the company

itself" must first be shown himself to have been guilty of manslaughter. Only if the individual who is the embodiment of the company is found guilty can the company be convicted. Where there is insufficient evidence to convict the individual, any prosecution of the company must fail. This principle is often referred to as the "identification" doctrine.

3.1.4 There can often be great difficulty in identifying an individual who is the embodiment of the company and who is culpable. The problem becomes greater with larger companies which may have a more diffuse structure, where overall responsibility for safety matters in a company can be unclear and no one individual may have that responsibility. In such circumstances it may be impossible to identify specific individuals who may be properly regarded as representing the directing mind of the company and who also possess the requisite *mens rea* (mental state) to be guilty of manslaughter: in such circumstances, no criminal liability can be attributed to the company itself.

The need for reform

3.1.5 There have been a number of disasters in recent years which have evoked demands for the use of the law of manslaughter and failures to successfully prosecute have led to an apparent perception among the public that the law dealing with corporate manslaughter is inadequate. This perception has been heightened because the disasters have been followed by inquiries which have found corporate bodies at fault and meriting very serious criticism and in some instances there have been successful prosecutions for offences under the Health and Safety at Work Etc Act 1974, as amended ("the 1974 Act")⁴. These disasters have included:

- The Herald of Free Enterprise disaster on 6 March 1987 where the jury at the

⁴The low numbers of manslaughter cases in relation to deaths at work brought before the courts do not reflect any unwillingness on the part of the health and safety enforcing authorities to refer such cases to the CPS and the police, but result principally from shortcomings in the existing law on corporate manslaughter. From April 1992 to March 1998, 59 cases investigated by HSE were referred to the CPS for possible manslaughter charges. The CPS felt able to prosecute in only 18 cases and only 4 during that time were successful (most of these did not concern corporations).

inquest returned verdicts of unlawful killing in 187 cases and the DPP launched prosecutions against 7 individuals and the company. The case failed because the various acts of negligence could not be aggregated and attributed to any individual who was a directing mind.

- The King's Cross fire on 18 November 1987 which claimed 31 lives. London Underground were criticised for not guarding against the unpredictability of the fire and because no one person was charged with overall responsibility.
- The Clapham rail crash on 12 December 1988 which caused 35 deaths and nearly 500 injuries. British Rail were criticised for allowing working practices which were "positively dangerous" and it was said that the errors went much wider and higher in the organisation than merely to be the responsibility of those who were working that day.
- The Southall rail crash on 19 September 1997 which resulted in 7 deaths and 151 injuries. In July 1999 Great Western Trains (GWT) pleaded guilty to contravening Section 3(1) of the 1974 Act in that they failed to ensure that the public were not exposed to risks to their health and safety. They received a record fine for a health and safety offence of £1.5 million for what Mr Justice Scott-Baker described as "a serious fault of senior management". The judge had earlier ruled that a charge of manslaughter could not succeed because of the need to identify some person whose gross negligence was that of GWT itself.⁵

3.1.6 It is not only the law's apparent inability to hold accountable companies responsible for large scale disasters which led the Law Commission to propose that the law be reformed. The result of

the operation of the identification doctrine has meant that there have been only a few⁶ prosecutions of a corporation for manslaughter in the history of English law and only three successful prosecutions - OLL Ltd, Jackson Transport (Ossett) Ltd and Roy Bowles Transport Ltd - and all of these were small companies.⁷

3.1.7 The Law Commission also considered that there were many cases of deaths in factories and building sites where death could and should have been avoided. Furthermore, in response to the Law Commission's Consultation Paper No. 135 on involuntary manslaughter, the Health and Safety Executive (HSE) commented that death or personal injury resulting from a major disaster is rarely due to the negligence of a single individual. In the majority of such cases the disaster is caused as a result of the failure of systems controlling the risk with the carelessness of individuals being a contributing factor.

The Law Commission's proposals

3.1.8 The Law Commission considered that it would benefit both companies and the enforcement authorities, if companies were to take health and safety issues more seriously. The Commission considered a number of approaches for extending corporate liability but concluded by recommending that:

1. There should be a special offence of **corporate killing**, broadly corresponding to the proposed offence of killing by gross carelessness.
2. The corporate offence should (like the individual offence) be committed only where the corporation's conduct in causing death fell far below what could reasonably be expected.
3. The corporate offence should not (unlike the individual offence) require that the risk be obvious or that the defendant be capable of appreciating the risk.

⁵ The Attorney General's appeal to the Court of Appeal on this aspect of the case was rejected on 15 February 2000 (Attorney General's Reference no 2/1999)

⁶ Including Cory Bros Ltd [1927] 1 KB 810; Northern Shipping Mining Construction Ltd, The Times, 2,4 and 5 February 1965; P & O European Ferries (Dover) Ltd (1991) 93 Cr App R 72 (Central Criminal Court); Kite and OLL Ltd, Winchester Crown Court, 8 December 1994, reported in The Independent, 9 December 1994; R v Jackson Transport (Ossett) Ltd reported in Health and Safety at Work, November 1996, p.4; R v Great Western Trains Company (GWT), Central Criminal Court, 30 June 1999; Roy Bowles Transport Ltd, The Times, 11 December 1999.

⁷ Following the House of Lords decision in R v Adomako [1995] 1AC 17, the Court of Appeal ruled on 15 February 2000 in Attorney General's Reference No 2/1999 that a defendant can be convicted of gross negligence manslaughter without evidence of his state of mind. However, the Court also ruled that the guilt of a human individual had first to be established before a non-human could be convicted.

4. A death should be regarded as having been caused by the conduct of the corporation if it is caused by a “management failure”, so that the way in which its activities are managed or organised fails to ensure the health and safety of persons employed in or affected by its activities.
5. Such a failure will be regarded as a cause of a person’s death even if the immediate cause is the act or omission of an individual.
6. That individuals within a company could still be liable for the offences of reckless killing and killing by gross carelessness as well as the company being liable for the offence of corporate killing.

3.1.9 The Government considers that while there may prove to be difficulties in proving a “management failure” there is a need to restore public confidence that companies responsible for loss of life can properly be held accountable in law. The Government believes the creation of a new offence of corporate killing would give useful emphasis to the seriousness of health and safety offences and would give force to the need to consider health and safety as a management issue.

The Government therefore accepts the Law Commission’s proposal for a new offence of corporate killing, subject to what is said below.

2. POTENTIAL DEFENDANTS

Corporations

3.2.1 The Law Commission proposed that the offence of corporate killing should not apply to a corporation sole⁸ but to any other body corporate, wherever incorporated, irrespective of the legal means by which they were incorporated (clause 4(8) of the draft Bill contained in the Law Commission’s report No. 237 refers). This definition would catch the main category of body which the offence of corporate killing is intended to cover, namely corporations formed for the purpose of securing a profit for their members.

⁸ A corporation sole is a corporation constituted in a single person in right of some office or function, which grants that person a special legal capacity to act in certain ways. Examples of corporations sole include many Ministers of the Crown and government officers eg the Secretary of State for Defence and the Public Trustee and a bishop (but not a Roman Catholic bishop), a vicar, archdeacon, and canon. The Law Commission proposed they be excluded because a corporation sole is a legal device for differentiating between an office holder’s personal capacity and in the capacity of the holder of the office.

It would also bring within the ambit of the offence other corporations such as local authorities, incorporated charities, educational institutes and incorporated clubs.

Unincorporated bodies

3.2.2 The Law Commission accepted that many unincorporated bodies are in practice indistinguishable from corporations and, arguably, their liability for fatal accidents should be the same. However, they concluded that it would be inappropriate to recommend that the offence of corporate killing extend to unincorporated bodies at present. Unincorporated associations which include partnerships, trusts (including hospital trusts), registered Friendly Societies and registered trade unions, would not be caught by the Commission’s proposals. The Law Commission took the view that under the existing law, individuals who comprise an unincorporated body may be criminally liable for manslaughter – as for any other offence – and so the question of attributing the conduct of individuals to the body itself does not arise. If the Law Commission’s proposal in this respect were accepted, it would not alter the present position of such organisations.

A preferred alternative - “Undertakings”

3.2.3 The Law Commission’s proposals are straightforward and would bring within the ambit of the offence the main subject of public concern - companies incorporated under the Companies Act. However, as the Law Commission acknowledged, there is often little difference in practice between an incorporated body and an unincorporated association. The Law Commission’s proposal could therefore lead to an inconsistency of approach and these distinctions might appear arbitrary. The Law Commission recommended limiting the proposals to corporations in the first instance before deciding whether to extend it further.

3.2.4 An alternative is that the offence could apply to “undertakings” as used in the 1974 Act. Although an “undertaking” is not specifically defined in the 1974 Act, HSE have relied on the

definition provided in the 1960 Local Employment Act where it is described as “any trade or business or other activity providing employment”. This definition could avoid many of the inconsistencies which would occur if the offence was applied to corporations aggregate but not to other similar bodies.

3.2.5 Clearly, the use of the word “undertaking” would greatly broaden the scope of the offence. It would encompass a range of bodies which have not been classified as corporations aggregate including schools, hospital trusts, partnerships and unincorporated charities, as well as one or two person businesses e.g. self-employed gas fitters. In effect the offence of corporate killing could apply to all employing organisations. We estimate that this would mean that *a total of 3½ million enterprises might become potentially liable to the offence of corporate killing*. However, such organisations are already liable to the provisions of the 1974 Act.

3.2.6 The Law Commission did not consider in detail which bodies might fall outside the definition of a corporation and have commented that they would like the offence of corporate killing to be as inclusive as possible. The Government too does not wish to create artificial barriers between incorporated and non-incorporated bodies, nor would we wish to see enterprises deterred from incorporation, which might be the case if the offence only applied to corporations. The Government is therefore inclined to the view that the offence should apply to all “undertakings” rather than just corporations.

The Government would welcome comments on whether the application of the offence to “undertakings” is preferable to applying it solely to corporations.

Government and quasi-government bodies.

3.2.7 There are a number of government bodies and quasi government bodies which at present are able to claim immunity from prosecution because they are said to be acting as a servant or agent of the Crown⁹. The question of whether an organisation can claim Crown immunity depends

upon the degree of control which the Crown, through its Ministers, can exercise over it in the performance of its duties. The fact that a Minister of the Crown appoints the members of such a body, is entitled to require them to give him information and is entitled to give them directions of a general nature does not make the corporation his agent. The inference that a corporation acts on behalf of the Crown will be more readily drawn where its functions are not commercial but are connected with matters, such as the defence of the realm, which are essentially the province of government.

3.2.8 If the Government were to change the law to introduce the offence of corporate killing, then Crown bodies could not be prosecuted for the offence. However, government and quasi-government bodies should be held accountable where death occurs as a result of a management failure. The Government therefore proposes to adopt an approach similar in effect to that taken in the Food Safety Act 1990. That Act applies the same standards to the Crown, thus requiring Crown bodies to allow access to relevant enforcement agencies, but rather than applying criminal liability provides for the courts to make a declaration of non-compliance with statutory requirements, which requires immediate action on the part of the Crown body to rectify the shortcoming identified. The Government will consider to what extent this procedure ought to apply to the emergency services.

The Government would welcome any comments on the application of Crown immunity to the offence of corporate killing.

3. WHO SHOULD INVESTIGATE AND PROSECUTE THE NEW OFFENCES?

3.3.1 Under the general criminal law in England and Wales, it is the responsibility of the police to investigate allegations of criminal activity, charge the accused and pass the case to the independent Crown Prosecution Service to determine whether the charge is appropriate and whether to proceed with a prosecution. These organisations will continue to have the same powers in respect of the new offences.

⁹ Some statutes often now refer to bodies not being servants or agents of the Crown eg the Civil Aviation Authority under the Civil Aviation Act 1982.

3.3.2 However, there will be many instances in England and Wales where a fatality occurs at work and the expertise on the operation of the undertaking will lie with another statutory body. There are a number of areas of work and public health that are subject to enforcement by agencies under specific legislation e.g. marine safety, civil aviation and food safety. Under the 1974 Act the enforcement of health and safety at work is divided between local authorities and HSE. In cases of work related death HSE and local authority inspectors liaise closely with the police who recognise that the health and safety enforcing authorities' knowledge and expertise is essential in determining both the immediate and underlying causes of death in such cases.

3.3.3 There is nothing in the 1974 Act which specifically provides that the health and safety enforcing authorities may prosecute for manslaughter. However, the Government considers that there are strong practical reasons for considering whether it should be open to health and safety enforcing authorities to investigate and prosecute the new offences.

3.3.4 The tests for the new offence of corporate killing - whether a management failure by the corporation is the cause of death and whether that failure constitutes conduct falling far below what could be reasonably expected - correspond to those applied by the health and safety enforcing authorities in considering prosecutions for health and safety offences where they have the expertise. The investigation requirements placed on the health and safety enforcing authorities mean that they will discover in the course of their investigation whether there is sufficient evidence to warrant a charge of corporate killing. To require the police to conduct what would in effect be a parallel investigation would lead to duplication of effort. Prosecution led by the relevant enforcing authorities, such as the HSE, the Civil Aviation Authority, or the Maritime and Coastguard Agency, would avoid the complexity of current arrangements for liaison with the police and referral to the CPS and would facilitate consideration of corporate killing together with any other offences which might also be appropriate.

3.3.5 In cases where the responsibility for a death at work lies squarely with individuals, the health and safety enforcing authorities in England and Wales should continue to consider, as they do

now, whether a reference to the police or CPS for a possible "reckless killing" or "killing by gross carelessness" prosecution was appropriate. However, where a major and essential element of the circumstances giving rise to an individual offence of manslaughter arises from the context of the work being done, the Government considers that there is a case for investigation and prosecution of individuals by the health and safety authorities. In cases where the HSE has identified an individual as being criminally liable for a death at work, they should continue to consider, as they do now, whether to refer the matter to the police.

The Government therefore considers that there is a good case in England and Wales for the health and safety enforcing authorities and possibly other enforcement agencies, as appropriate, to investigate and prosecute the new offences, in addition to the police and CPS. We would welcome any comments on this.

3.3.6 Who should actually investigate/prosecute in any particular case should be based on suitable working agreements to be developed between the police, CPS and the relevant authorities in each area. Such agreements have already been reached between relevant enforcement agencies and the Government sees little difficulty in the relevant agencies reaching agreement on charges relating to the new offences.

3.3.7 When a work-related death occurs there is a need to investigate the accident to determine what went wrong and to try to prevent such events in the future. This however has to be balanced against the need to prosecute anyone who may be guilty of an offence. The question of where this balance is to be found, so far as transport accidents are concerned, is being addressed in the Government's present Transport Safety Review, and was the subject of a separate consultation by the Department of the Environment Transport and the Regions (DETR) during 1999. On the aviation side accident investigations are undertaken by the DETR's Air Accidents Investigation Branch, and on the maritime side by its Marine Accident Investigation Branch. Each is concerned solely with establishing an accident's cause, and with learning and promulgating as quickly as possible any lessons for the future. Neither has any prosecuting functions, which lie instead with the Civil Aviation Authority and Maritime and Coastguard Agency, respectively. Rail accidents are investigated by Her Majesty's

Railways Inspectorate (part of the HSE), whose investigations are directed towards both the establishment of cause and, if appropriate, possible prosecution under the 1974 Act. The British Transport Police separately investigate possible crimes such as manslaughter.

Legal Aid

3.3.8 Under the Legal Aid Act 1988 legal aid may be available to an individual person in connection with criminal proceedings. But the Act (with certain exceptions) specifically excludes help being made available at any stage to a body of persons, whether the body is incorporated or unincorporated.

3.3.9 A person who is questioned by the police, or by Customs and Excise officers, about any matter may ask to see a solicitor. Such legal advice and assistance will be provided free of charge without reference to a person's means. This provision does not extend to interviews by authorities other than the police or Customs and Excise. So, for example, an individual being interviewed by the HSE would not currently be entitled to free legal advice and assistance. The case for extending the arrangements to other non-police investigatory bodies is being kept under review.

3.3.10 If a person is charged by the police (or summonsed), he or she may apply for legal aid for a solicitor to provide advice and representation in court. An application would be determined by the court concerned in the light of two statutory tests. These are that the court must be satisfied that it is in the interests of justice for representation to be granted and, secondly, that the defendant's financial resources are such that he or she needs help in meeting the cost of representation.

3.3.11 New provisions contained in the Access to Justice Act 1999 will eventually replace the current legal aid scheme. The arrangements for providing advice and assistance for people who are being investigated will be broadly the same as now. But where a person applies for help with representation in court, it will no longer be necessary for the court to have regard to their financial resources.

4. ENFORCEMENT AGAINST COMPANIES AND THEIR OFFICERS

3.4.1 The Government expects that, while any undertaking could be liable (in the event of the creation of a new offence of "corporate killing") for the offence, most prosecutions would be against companies (that is, business associations incorporated under the Companies Act 1985 or under previous companies legislation or under similar legislation overseas). Our concern is to ensure that, in the event of a finding of corporate killing being made against a company, there should be sufficient enforcement powers to ensure that the judgement of the court could be given effect.

3.4.2 In accordance with the Law Commission's recommendations, the Government proposes that undertakings, including corporations, should be liable to a fine and subject, as necessary, to orders to take remedial action. The Government is, however, concerned both that there should not be scope for avoidance measures by unscrupulous companies or directors, and that enforcement action should act as a real deterrent, even in large companies and within groups of companies. Our concern lies principally in the four following areas.

(i) Enforcement against companies not incorporated in Great Britain

3.4.3 Any body corporate wherever incorporated would be covered by the Government's proposals. It would therefore cover any company doing business in this country, including companies incorporated outside Great Britain which had not registered at Companies House as "overseas companies".

3.4.4 The Government believes that there would be a strong case for the taking of enforcement action against companies incorporated outside Great Britain and Northern Ireland which commit the offence within the jurisdiction of the English courts. We believe, for example, that it would be unacceptable if a company which carried out most of its business in the United Kingdom were to escape prosecution because the directors had chosen to incorporate overseas. At the same time, the Government accepts that there might be practical difficulties in taking enforcement action against companies incorporated in some foreign jurisdictions.

(ii) Liability within groups of companies

3.4.5 The directors of each individual company in a group are required to operate it in the best interests of that company and not in the interests of the group. It has long been recognised under company law, however, that in relation to financial disclosure, a “true and fair” view of the financial position of a group of companies cannot be presented unless the parent company presents group financial statements as well as its own individual statements. Moreover, since 1986, a parent company may be liable in relation to fraudulent or wrongful trading as a shadow director.

3.4.6 The Government is concerned that it should not be possible for holding companies to attempt to evade possible liability on a charge of corporate killing through the establishment of subsidiary companies carrying on the group’s riskier business which could most readily give rise to charges of corporate killing. Moreover, we are concerned by the possibility that a subsidiary company within a large group of companies might have insufficient assets to pay a large fine, and that, in such cases, liability could not be transferred to its parent company. The Government recognises that a company must be convicted on a charge of corporate killing in proper proceedings, and that such liability cannot simply be moved around within a group of companies. Equally, we believe that it is important that group structures should not be used as a mechanism for evasion.

The Government therefore proposes that the prosecuting authority should also be able to take action against parent or other group companies if it can be shown that their own management failures were a cause of the death concerned.

(iii) Enforcement action against a director or other company officer

3.4.7 It is a fundamental principle of company law that, from the date of incorporation, a company is an artificial legal person with rights and duties distinct from its members or directors. However, as explained earlier, the limited liability provided by incorporation does not at present protect individuals from criminal liability nor will

the proposed new offence of corporate killing of itself either increase or decrease individual liability. It will merely provide a different basis of criminal liability for corporations.

3.4.8 The Law Commission’s report argued that punitive sanctions on company officers would not be appropriate in relation to its proposed corporate killing offence, since the offence would deliberately stress the liability of the corporation as opposed to its individual officers. The Government is, however, concerned that this approach:

- (a) could fail to provide a sufficient deterrent, particularly in large or wealthy companies or within groups of companies; and
- (b) would not prevent culpable individuals from setting up new businesses or managing other companies or businesses, thereby leaving the public vulnerable to the consequences of similar conduct in future by the same individuals.

3.4.9 The Government is therefore inclined to the view that action against individual directors or officers might be justified even in cases where a company found guilty of corporate killing could pay the fine imposed by the court and/or comply with a remedial order. The Law Commission has indicated in the course of the Government’s consideration of its report that it would also support action against culpable directors or officers of the company.

The Government proposes that any individual who could be shown to have had some influence on, or responsibility for, the circumstances in which a management failure falling far below what could reasonably be expected was a cause of a person’s death, should be subject to disqualification from acting in a management role in any undertaking carrying on a business or activity in Great Britain.

3.4.10 The ground for disqualification would not be that of causing the death but of contributing to the management failure resulting in the death. It is envisaged that a separate proceeding would usually be brought against individual officer(s) following the conviction of the company on indictment; in some cases (e.g. where the company was insolvent), it might, however, be appropriate to move straight to a disqualification proceeding. Disqualification would normally be

for a limited period of time, but might, in the most serious cases, be unlimited. If a person acted in contravention of a disqualification order, he would be liable to imprisonment or an unlimited fine, or both.

3.4.11 The Government believes that this would be an effective and proportionate response. The disqualification of culpable company directors from a role in managing any undertaking would make evasion of a disqualification order much more difficult; the Government would not, for example, wish to see a person disqualified from acting as a director under such circumstances joining a partnership as a way of circumventing the disqualification order. It would, moreover, (1) provide a meaningful level of protection to the public and (2) provide a meaningful level of deterrent even in respect of directors of large and wealthy companies, as their personal income could be severely affected by such a disqualification order. It would also be possible to bring such proceedings against officers of the parent company or of other group companies who exercised control or influence over the management of the company which caused the death.

The Government would welcome comments on (a) whether it might be appropriate for action to be taken against individual officers in relation to the offence of corporate killing; (b) its proposal that culpable officers should be disqualified from acting in a management role in any undertaking.

3.4.12 The Government's aim is to make undertakings more accountable in law where a person dies because of a failure on their part. If there was sufficient evidence, an individual officer could be charged with one of the new manslaughter offences ie killing by gross carelessness or reckless killing, whether or not proceedings were brought against the undertaking for the new corporate killing offence. In addition, we are proposing that, where the undertaking has been convicted of the corporate killing offence, such officers could face disqualification in separate legal proceedings commenced against them as referred to in paragraph 3.4.10 to 3.4.11 above. However, it has been argued that the public interest in encouraging officers of undertakings to take health and safety seriously is so strong that officers should face criminal sanctions in circumstances where, although the undertaking

has committed the corporate offence, it is not (for whatever reason) possible to secure a conviction against them for either of the individual offences.

3.4.13 It would not be possible for an individual officer automatically to be made criminally liable on the sole basis of the conviction of an undertaking for the corporate offence. It would be necessary for him to be charged with an offence which he has committed and be given the chance to defend himself against it. In order to go down this route, it would be necessary to create an additional criminal offence in respect of substantially contributing to the undertaking in question's corporate offence, leading to the death of a person. The Government has reached no firm view on this suggestion but is using this consultation paper as an opportunity to obtain respondents' views on the possibility of creating such an offence, and if such a course were adopted, the range of penalties which should be available on that conviction - and in particular, whether a court should be able to sentence individual officers to imprisonment.

The Government would welcome comments on whether, in addition to the proposals made elsewhere, it is right in principle that officers of undertakings, if they contribute to the management failure resulting in death, should be liable to a penalty of imprisonment in separate criminal proceedings.

(iv) Insolvency and dissolution of companies

3.4.14 The Government is concerned that the directors of a company, or of a parent company, should not be able to evade fines or compensation orders, or otherwise frustrate corporate killing proceedings, by dissolving the company or by deliberately making it insolvent. It might be necessary to ensure that criminal proceedings in relation to corporate killing can continue to completion notwithstanding the formal insolvency of the company.

3.4.15 Another possibility would be to provide for proceedings which would "freeze" the property and assets of companies. Such proceedings could be similar to the charging and restraint orders under the drug trafficking offences legislation. In the case of corporate killing, it might be necessary to allow the prosecuting authority to take action to freeze company assets before criminal

proceedings were started to prevent the directors or shadow directors of the company transferring assets in the knowledge that it had been involved in a death which might give rise to a corporate killing charge.

3.4.16 However, such proposals would represent a significant extension of the powers available in such a situation. The legislation at present only allows for assets arising from the proceeds of crime to be frozen. Furthermore, if the Government were to propose the availability of such powers, it would have to be compliant with the European Convention of Human Rights. A fundamental principle of English law, which is also contained in the European Convention of Human Rights, is that a person (which included a legal person) is innocent until proven guilty. The Government therefore considers that the availability of such powers to the court in all circumstances may not be justified. However, one possibility might be to allow the Court to use such powers where a plea of guilty had been entered where you would know what the likely penalty was and therefore could freeze that portion of the assets.

The Government would welcome views on whether criminal proceedings should be allowed to continue after the formal insolvency of a company. We would also welcome views on whether it would ever be appropriate to permit the prosecuting authority to institute proceedings to freeze company assets pending the institution of criminal proceedings on a charge of corporate killing.

5. ENFORCEMENT AGAINST OTHER CORPORATIONS OR UNDERTAKINGS AND THEIR OFFICERS

3.5.1 Several of the issues discussed above are also relevant to other forms of undertaking, such as partnerships. The Government is concerned that liability for “corporate killing” should not be determined by the form of undertaking. It believes that this would be both inherently unfair, and cause great scope for evasion. In particular, the Government is of the view that:

- Any individual who could be shown to have had some influence on, or responsibility for, circumstances in which

management failure far below what could reasonably be expected was a cause of a person’s death should be subject to disqualification from acting in a management role in any undertaking. This would apply as much in the case of a manager in a partnership or a school governor as in the case of a company director.

- Prosecuting authorities should have authority to institute proceedings to freeze assets in any undertaking, not just in companies.

The Government would welcome views on these points.

6. REMEDIAL ACTION AND ENFORCEMENT OF REMEDIAL ORDERS

3.6.1 If an undertaking is found guilty of corporate killing, the Government accepts the Law Commission’s recommendation that the court should have the power to make remedial orders. In many cases the Government envisages that the HSE and other enforcement bodies would use their powers to issue enforcement notices as part of, or following, their investigation and in advance of any hearing. However, we also consider it would be useful if the court had the power to order remedial action either where HSE (or the other appropriate enforcement body) had not issued a notice or where such a notice had not been complied with.

3.6.2 The responsibility for drawing up the order should rest with whichever agency is prosecuting. All applications for orders in areas where an enforcement authority (such as HSE) has responsibility should be made by or in consultation with that body to ensure that the terms of the order and any steps specified by the court are reasonable, in line with enforcement policy and what the enforcement authority would regard as good practice. Both the prosecuting agency and the defence should have the opportunity to make representations or call evidence regarding the application. The enforcement authority should also be given the task of checking compliance and referring matters back to the court where necessary. No new enforcement powers would be necessary to allow this approach.

7. OTHER ISSUES

Territorial extent

3.7.1 The general rule in English law is that nothing done outside England and Wales is an offence under English criminal law. One of the statutory exceptions to this is that the English courts have jurisdiction over its subjects for offences of homicide committed abroad, which includes involuntary manslaughter. The Law Commission recommended, and the Government accepts, that this should continue to be the case in respect of reckless killing and killing by gross carelessness. The Government also propose that it would apply to the proposed third individual homicide offence.

3.7.2 In the case of corporate killing the Law Commission recommended that criminal jurisdiction should only be territorially based. This would mean that all companies, including foreign registered companies, would be subject to the jurisdiction of the English courts on the law of corporate killing *providing the injury that results in death occurs in a place where the English courts have jurisdiction*. However, companies registered in England or Wales which commit corporate killings in the course of their work abroad will not be liable to prosecution here. That would be a matter for the courts in the country concerned.

3.7.3 The Government considers that there would be very considerable practical difficulties if we were to attempt to extend our jurisdiction over the actions abroad of companies registered in England or Wales. These difficulties would mean that the prosecution of offences committed by English or Welsh companies within other states' territory would be practically unenforceable. Our police have no authority to gather evidence abroad and contrary to the system prevailing elsewhere in Europe, where written evidence is admissible, our courts have a tradition of oral evidence and cross-examination. Furthermore, the Government will only consider taking extra-territorial jurisdiction where dual criminality exists i.e. where the behaviour concerned constitutes an offence both here and under the laws of the country in which it occurred. We apply this policy so that we cannot be accused of "exporting our laws".

3.7.4 On balance therefore the Government is inclined to accept the Law Commission's view

although we recognise that this will lead to a situation where a "natural" person will be potentially liable in the English courts to prosecution for an involuntary homicide offence committed abroad whereas an undertaking will not. The Government will also ensure that the Law Commission's draft Bill is amended in a way that will ensure that injuries caused off-shore but within the jurisdiction of the courts in England and Wales are also caught as well as injuries on oil platforms.

Independent contractors

3.7.5 The Government accepts the Law Commission's suggestion that there is no need to make specific provision in the present context in relation to the employment of a contractor by an undertaking. In every case it will be left to the jury to determine:

1. whether a death of which the immediate cause was the conduct of a contractor employed by the undertaking was attributable, at least in part, to a management failure on the part of the undertaking; and
2. if so, whether the failure amounted to conduct falling far below what could reasonably be expected of the undertaking in the circumstances.

Other recommendations made by the Law Commission

3.7.6 The Government also agrees:

- that there should be no requirement of consent to the beginning of private prosecutions for the offence of corporate killing;
- that the offence of corporate killing should be triable only on indictment, to mark the seriousness of the offence;
- the Law Commission's recommendations on alternative verdicts, in particular, that it should be possible for the jury, if they find a defendant not guilty of any of the proposed offences, to convict a defendant of an offence under section 2 or 3 of the 1974 Act;
- that there should be no individual liability for the corporate offence itself.

4. TRANSMISSION OF DISEASE & CONSULTATION PAPER ON OFFENCES AGAINST THE PERSON

The present position on the transmission of disease resulting in death

4.1 At present if there is an unlawful killing and proof of an intention to kill or to cause serious injury, together with the absence of any mitigating circumstances (such as provocation or diminished responsibility, which would reduce the offence to one of voluntary manslaughter), then the offence is one of murder. It is arguable that where death is caused by an intentional transmission of a disease and which was carried out with the intention to kill or cause serious injury, it could amount to murder. However, the Law Commission's report on involuntary manslaughter deals only with those situations where there is an unlawful killing, where the accused has some blameworthy mental state less than an intention to kill or cause grievous bodily harm.

4.2 Although the Law Commission's paper is not explicit on the point, they have expressed the view that if someone recklessly or through gross carelessness infects a person with a disease and that person subsequently dies, the perpetrator could and should be liable for manslaughter. The Government doubts that a prosecution could succeed at present where a disease:

- is sexually transmitted;
- is passed between mother and child during pregnancy, at birth or by breast-feeding; or
- is passed in any other manner between individuals in circumstances in which there is not a professional duty of care involved, or the disease has not been transmitted because of a criminal act that carried it with it a risk of injury.

However, we accept that, as a general rule, such behaviour resulting in death should be capable of being prosecuted - but that there needs to be an exception where the transmission occurs directly between individuals.

Approach taken in the Home Office consultation paper on Offences Against the Person

4.3 In the Home Office consultation paper on Offences Against the Person (OATP) we made it clear that the Government proposed that only the *intentional* transmission of disease should be a criminal offence. This was in part because **the Government is determined to ensure that people are not deterred from coming forward for diagnostic tests and treatment and for advice about the prevention of sexually transmitted diseases** such as HIV or hepatitis B and that someone with such a disease should have no reason to fear prosecution, unless they deliberately set out to cause serious injury to another by passing on the disease. The Government remains wholly committed to this approach. In addition, the Government does not believe that it would be right or appropriate to criminalise the reckless transmission of normally minor illnesses, even though they could have potentially serious consequences for those vulnerable to infection.

4.4 However, in the OATP paper the way this was achieved was by specifically excluding the transmission of disease (all forms of transmission) from the meaning of "causing death or serious injury" except where there was a deliberate intention to cause such death or serious injury. This Paper deals only with those instances where there is some mental state less than a deliberate intention to cause death or serious injury. If therefore we were simply to adopt the same solution as that in the OATP paper, it would mean that all transmissions of disease would have to be specifically excluded from the meaning of "causing death or serious injury" in the draft Bill on Involuntary Homicide.

4.5 This would mean, for instance, that a baker could sell pies which he knew were infected and which might result in death, without being liable in the criminal law for manslaughter (he could perhaps be charged with an offence of selling food

not complying with food safety requirements). It would also mean that where a patient is infected with a disease due to obvious recklessness or gross negligence by a health care worker, the latter could not, unlike at present, be held liable in the criminal law. It might also exclude from prosecution for homicide those who contaminate food for blackmail purposes if a victim subsequently died. The Government views this as unacceptable.

Why direct transmission of disease should be excepted

4.6 While the Government considers that the grossly careless or reckless transmission of disease which results in death should generally be caught by the criminal law, we do not consider that this should apply where the transmission occurs directly between one individual and another. This would mean that **liability would not arise under these proposals where transmission occurs in the course of sexual activity**, nor, for example, would it if the disease was passed on between mother and child during pregnancy, at birth or by breastfeeding. There are a number of reasons for this approach.

4.7 The first is the need, mentioned above, to ensure that people are not deterred from being tested, treated for or advised about the prevention of sexually transmitted diseases. The second is that the Government does not believe that the reckless or gross careless transmission of disease between two individuals, such as in the course of sexual activity or between mother and child could presently be prosecuted and we wish to preserve what we believe to be the present position in law. Although the Law Commission have expressed a contrary view, we are unaware of any successful prosecution (perhaps because of the difficulty of proving a causal link).

4.8 Thirdly, as a matter of general principle, the Government does not consider it appropriate for the criminal law to intervene in the most private activity between individuals unless the most reprehensible form of behaviour is involved i.e. where there is a deliberate intention to inflict bodily harm on another individual. It could, in any event, be contrary to the European Convention on Human Rights to do so. Fourthly, the Government has no wish to give people false reassurances about what the criminal law can and cannot protect them from.

We regard it as crucial to encourage all individuals to take responsibility for their own health and welfare.

Where even the reckless/grossly careless direct transmission of disease between individuals should be caught

4.9 The Government's general approach is that while the grossly careless or reckless transmission of disease which results in death should generally be caught by the criminal law, this should not apply where the transmission occurs directly between one individual and another. However, the Government considers that there needs to be an exception to this which would have the effect of preserving the current position in law. This is where the person who transmits the disease owes a professional duty of care to the other. So, for instance, if a health care worker with an infectious disease is so reckless or grossly careless that he or she accidentally transmits the infection to a patient, the Government takes the view that individuals in such circumstances should be culpable in law. The fact that the transmission takes place between two individuals seems incidental to the fact that it is because of a failure to observe a professional duty of care towards the victim that the latter has become infected.

How to achieve liability in circumstances the Government considers appropriate

4.10 The need to except the direct transmission of disease between individuals from the general proposition that the reckless/grossly careless transmission of disease should be culpable, means that we cannot simply include the transmission of disease within the meaning of "causing death or serious injury". This is because it would lead to a situation where a person who recklessly or carelessly passed on an infection in the course of sexual intercourse which resulted in the death of the person to whom the disease was passed on could be prosecuted. That is unacceptable because of the reasons given above.

4.11 The simple inclusion of the transmission of disease within the meaning of "causing death or serious injury" would also lead to unacceptable inconsistencies in the law. Under our draft OATP Bill, where A recklessly infects B who suffers a serious injury as a result, no charge would lie

against A. If we were to include the transmission of disease within the proposals on involuntary homicide without qualification, if B died in such circumstances, a charge of reckless killing could successfully be brought. So, for instance, if someone recklessly transmitted hepatitis B to another person which could lead to that person's death in 15 years time, they could not be prosecuted until the person died of the transmitted disease.

The Government's proposed solution

4.12 The Government considers that the draft Involuntary Homicide Bill needs to be amended to reflect that:

- generally those who recklessly or through gross carelessness pass on a disease which results in death should be potentially liable except that
- liability should not arise for the transmission of a disease where it occurs directly between one individual and another unless
- a professional duty of care is owed by the person who transmitted the disease to the person to whom it was passed on to.

4.13 This would mean that **the position for those who have or may acquire a sexually transmitted disease has not changed from the position set out in the Government's consultation paper on OATP** - only those who intentionally transmit disease in the course of sexual activity with the intention to kill or cause serious injury could be liable in the criminal law. If the proposal for dealing with the unintentional transmission of disease in the Involuntary Homicide Bill were accepted, the Government would amend its OATP Bill in the same way.

The Government would welcome comments on whether the formulation for the circumstances in which the transmission of disease might be covered by the new offences, set out in paragraph 4.12, is appropriate.

4.14 The Government takes the view that the third possible offence of individual involuntary homicide should not include the transmission of disease. This is because although that offence involves a situation where some injury was intended or there was recklessness as to whether

injury is caused, the injury is not serious and death is totally unforeseeable. The Government did not and does not wish to potentially criminalise the transmission of normally minor diseases which could be fatal to susceptible individuals. To allow the transmission of disease to be included under this offence could make someone potentially liable where no one could have foreseen that the disease would be transmitted or that serious injury or death would result.

The transmission of disease and corporate killing

4.15 Although this issue was not specifically addressed in the Law Commission's paper, where there is a company whose:

- management failure has been one of the causes of a person's death and
- the management failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances

there seems no reason, in principle, why liability should not arise where the management failure led to the transmission of a disease which led to death. Liability could arise if the management failure was a cause, rather than the sole cause of death and therefore inclusion of transmission of disease could have an impact on the number of cases of corporate killing that might be brought. However, in view of the definition of corporate killing, that conduct must have fallen far below what could be expected of the corporation in the circumstances, the prospect of a large number of cases based on the transmission of disease should not be over-stated.

The Government would welcome any comments on what effect the inclusion of the transmission of disease within the ambit of the offence of corporate killing would have on the number of potential prosecutions for corporate killing.

5. CONCLUSION AND SUMMARY OF QUESTIONS

Conclusion

5.1 The present law on involuntary manslaughter is too wide in its scope - it has led to problems for judges in sentencing and problems for the public in understanding why, in any given case, the judge awarded the particular sentence. The law has also been the subject of controversy in terms of defining the right test – the present test for gross negligence manslaughter is circular as the jury has to be directed to convict the defendant for the crime if they think his conduct was “criminal”. Importantly the law has also been found wanting when trying to deal effectively where the actions or inactions of corporations and other undertakings have led to deaths.

5.2 This Consultation Paper sets out how the Government considers the law could be improved, simplified and made more effective. It draws heavily on the work of the Law Commission. In particular the hierarchy of offences of reckless killing, killing by gross carelessness and the third proposed homicide offence should make it easier for the courts to ensure that the penalty matches the crime and the public to see that this is demonstrably so. There is no question that the law on corporate manslaughter is in need of reform. It is hoped that these proposals will improve the delivery of justice through clear understandable offences which will allow for effective and efficient investigation, prosecution, trial and sentencing.

Summary of questions/information requested

5.3 The Government would welcome views on any aspects of the proposals. However, a number of specific questions are asked at certain points in the text (repeated below): these are questions to which answers would be particularly helpful. In addition any views on the likely *practical consequences* of the proposed changes would be welcomed.

5.4 Specific questions/information requested in the text:

- The Government invites views on whether there should be an additional involuntary homicide offence covering those situations where a minor injury is all that was intended but death, which was unforeseeable, occurs. (Paragraph 2.13 refers).
- Are the proposed maximum penalties appropriate? In particular, is the proposed maximum penalty of 10 years for killing by gross carelessness appropriate? Should the maximum sentence where death results but the offender was reckless or intended only minor injury be between 5 and 10 years? (Paragraph 2.20 refers).
- The Government would welcome comments on whether the application of the offence to “undertakings” is preferable to applying it solely to corporations. (Paragraph 3.2.6 refers).
- The Government would welcome any comments on the application of Crown immunity to the offence of corporate killing. (Paragraph 3.2.8 refers).
- The Government therefore considers that there is a good case in England and Wales for the health and safety enforcing authorities and possibly other enforcement agencies, as appropriate, to investigate and prosecute the new offences, in addition to the police and CPS. We would welcome any comments on this. (Paragraph 3.3.5 refers).
- The Government therefore proposes that the prosecuting authority should also be able to take action against parent or other group companies if it can be shown that their own management failures were a cause of the death concerned. (Paragraph 3.4.6 refers).

- The Government would welcome comments on (a) whether it might be appropriate for action to be taken against individual officers in relation to the offence of corporate killing; (b) its proposal that culpable officers should be disqualified from acting in a management role in any undertaking. (Paragraph 3.4.11 refers).
- The Government would welcome comments on whether, in addition to the proposals made elsewhere, it is right in principle that officers of undertakings, if they contribute to the management failure resulting in death, should be liable to a penalty of imprisonment in separate criminal proceedings. (Paragraph 3.4.13 refers).
- The Government would welcome views on whether criminal proceedings should be allowed to continue after the formal insolvency of a company. We would also welcome views on whether it would ever be appropriate to permit the prosecuting authority to institute proceedings to freeze company assets pending the institution of criminal proceedings on a charge of corporate killing. (Paragraph 3.4.16 refers).
- The Government would welcome views on the personal liability of those in undertakings other than a company and the freezing of assets of an undertaking. (Paragraph 3.5.1 refers).
- The Government would welcome comments on whether the formulation for the circumstances in which the transmission of disease might be covered by the new offences, set out in Paragraph 4.12, is appropriate. (Paragraph 4.13 refers).
- The Government would welcome any comments on what effect the inclusion of the transmission of disease within the ambit of the offence of corporate killing would have on the number of potential prosecutions for corporate killing. (Paragraph 4.15 refers).

Annex overleaf

Annex:

THE LAW COMMISSIONS DRAFT INVOLUNTARY HOMICIDE BILL & GOVERNMENT COMMENTS ON IT

The Government has set out below some (but not all) of the proposed changes to the Law Commission's draft Involuntary Homicide Bill, reprinted opposite. Most of these result from those issues identified earlier in this Paper where the Government takes a different view from the Law Commission. For the sake of consistency the Government has determined that on all the issues where the same words are used in its own draft Offences Against the Person (OATP) Bill and the draft Law Commission's Involuntary Homicide Bill, such as the definition of "injury", we will ensure that the same meaning/definitions are applied to those terms for both OATP and Involuntary Homicide.

Clause 1 - Reckless Killing

This clause of the Law Commission's Bill shares almost the same subjective definition of recklessness as the Government's draft OATP Bill. We are satisfied that this subjective definition is appropriate (relating to the risk and the circumstances as the defendant knew or believed them to be) rather than an objective standard, such as is applied in the Criminal Damage Act.

Neither Bill defines what is meant by serious injury. The Law Commission has argued that it is for the courts to decide when an injury is serious. The Government has accepted this view in the OATP context, and it would be consistent to apply the same conclusion to the Involuntary Homicide Bill.

Clause 2 - Killing by gross carelessness

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Create new offences of reckless killing, killing by gross carelessness and corporate killing to replace the offence of manslaughter in cases where death is caused without the intention of causing death or serious injury. A.D. 1995.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 5 **1.—**(1) A person who by his conduct causes the death of another is guilty of reckless killing if— **Reckless killing.**
- (a) he is aware of a risk that his conduct will cause death or serious injury; and
 - (b) it is unreasonable for him to take that risk having regard to the circumstances as he knows or believes them to be.
- 10 (2) A person guilty of reckless killing is liable on conviction on indictment to imprisonment for life.

- 2.—**(1) A person who by his conduct causes the death of another is guilty of killing by gross carelessness if— **Killing by gross carelessness.**
- 15 (a) a risk that his conduct will cause death or serious injury would be obvious to a reasonable person in his position;
 - (b) he is capable of appreciating that risk at the material time; and
 - (c) either—
 - 20 (i) his conduct falls far below what can reasonably be expected of him in the circumstances; or
 - (ii) he intends by his conduct to cause some injury or is aware of, and unreasonably takes, the risk that it may do so.
- (2) There shall be attributed to the person referred to in subsection (1)(a) above—
- 25 (a) knowledge of any relevant facts which the accused is shown to have at the material time; and

Clause 3 - Omissions causing death

The clause refers to a person not being guilty under sections 1 or 2 by reason of an omission unless the omission is in breach of a duty at common law. The Law Commission have made it clear that they wanted to ensure that all those duties, including statutory duties, which apply at present to involuntary manslaughter should continue to apply to the new offences. The Government intends to amend clause 3 to give effect to this intention.

Clause 4 - corporate killing

The Government considers that there is no good reason why an individual should not be convicted for aiding, abetting, counselling or procuring an offence of corporate killing and therefore proposes that clause 4(4) of the Law Commission's draft Bill should be removed.

(b) any skill or experience professed by him.

(3) In determining for the purposes of subsection (1)(c)(i) above what can reasonably be expected of the accused regard shall be had to the circumstances of which he can be expected to be aware, to any circumstances shown to be within his knowledge and to any other matter 5 relevant for assessing his conduct at the material time.

(4) Subsection (1)(c)(ii) above applies only if the conduct causing, or intended to cause, the injury constitutes an offence.

(5) A person guilty of killing by gross carelessness is liable on conviction on indictment to imprisonment for a term not exceeding [] 10 years.

Omissions causing death.

3. A person is not guilty of an offence under sections 1 or 2 above by reason of an omission unless the omission is in breach of a duty at common law.

Corporate killing.

4.—(1) A corporation is guilty of corporate killing if— 15

- (a) a management failure by the corporation is the cause or one of the causes of a person's death; and
- (b) that failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances.

(2) For the purposes of subsection (1) above— 20

- (a) there is a management failure by a corporation if the way in which its activities are managed or organised fails to ensure the health and safety of persons employed in or affected by those activities; and
- (b) such a failure may be regarded as a cause of a person's death 25 notwithstanding that the immediate cause is the act or omission of an individual.

(3) A corporation guilty of an offence under this section is liable on conviction on indictment to a fine.

(4) No individual shall be convicted of aiding, abetting, counselling or 30 procuring an offence under this section but without prejudice to an individual being guilty of any other offence in respect of the death in question.

(5) This section does not preclude a corporation being guilty of an offence under section 1 or 2 above. 35

(6) This section applies if the injury resulting in death is sustained in England and Wales or—

- (a) within the seaward limits of the territorial sea adjacent to the United Kingdom;
- (b) on a British ship or vessel; 40
- (c) on a British-controlled aircraft as defined in section 92 of the Civil Aviation Act 1982; or
- (d) in any place to which an Order in Council under section 22(1) of the Oil and Gas (Enterprise) Act 1982 applies (criminal jurisdiction in relation to offshore activities). 45

1982 c.16

1982 c.23

Clause 5 - remedial orders against convicted corporations

Clause 6 - alternative verdicts

The principle of alternative verdicts - of being able to substitute a lesser offence when the more serious offence that is charged is not sufficiently proved - is well established. The proposals in the Government's OATP Bill extend the provisions to the magistrates' court; alternative verdicts have been available in the Crown Court since the Criminal Law Act 1967. The Government therefore accepts the proposed set of alternative verdicts for manslaughter proposed by the Law Commission.

5 (7) For the purposes of subsection (6)(b) and (c) above an injury sustained on a ship, vessel or aircraft shall be treated as including an injury sustained by a person who is then no longer on board, and who sustains the injury, in consequence of the wrecking of, or of some other mishap affecting, the ship, vessel or aircraft.

(8) In this section "a corporation" does not include a corporation sole but includes any body corporate wherever incorporated.

10 5.—(1) A court before which a corporation is convicted of corporate killing may, subject to subsection (2) below, order the corporation to take such steps, within such time, as the order specifies for remedying the failure in question and any matter which appears to the court to have resulted from the failure and been the cause or one of the causes of the death.

Remedial orders against convicted corporation.

15 (2) No such order shall be made except on an application by the prosecution specifying the terms of the proposed order; and the order, if any, made by the court shall be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the corporation.

20 (3) In subsection (2) above references to the prosecution include references to the Health and Safety Executive and to any other body or person designated for the purposes of that subsection by the Secretary of State either generally or in relation to the case in question.

25 (4) The time specified by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of that time or extended time, as the case may be.

(5) A corporation which fails to comply with an order under this section is guilty of an offence and liable—

- 30 (a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding £20,000.

35 (6) Where an order is made against a corporation under this section it shall not be liable under any of the provisions mentioned in subsection (7) below by reason of anything which the order requires it to remedy in so far as it continues during the time specified by the order or any further time allowed under subsection (4) above.

(7) The provisions referred to in subsection (6) above are—

- 40 (a) sections 1, 2 and 4 above;
(b) the provisions of Part I of the Health and Safety at Work etc. Act 1974;
(c) the provisions of any regulations made under section 15(1) of that Act;
(d) the existing statutory provisions as defined in section 53(1) of that Act.

45 6.—(1) On an indictment for murder a person found not guilty of murder may be found guilty of reckless killing or killing by gross carelessness.

Alternative verdicts.

Clause 7 - abolition of involuntary manslaughter

Clause 8 - supplementary provisions

Both the Law Commission Bill and the Government's draft Bill on OATP preserve existing common law defences, lawful authority, justification or excuse for an act or omission. On intoxication the Government proposes that clause 19 of its draft OATP Bill, dealing with intoxication, should also apply to the involuntary homicide offences. The Law Commission's draft Bill will be amended accordingly.

Clauses 9 to 11

	(2) On an indictment for reckless killing a person found not guilty of that offence may be found guilty of killing by gross carelessness.
1974 c.37	(3) On an indictment for reckless killing, killing by gross carelessness or corporate killing a person found not guilty of that offence may be found guilty of an offence under section 2 or 3 of the Health and Safety at Work etc. Act 1974. 5
1967 c.58.	(4) Subsections (2) and (3) above are without prejudice to section 6(3) of the Criminal Law Act 1967 (alternative verdicts).
Abolition of involuntary manslaughter. 1957 c.11.	7. The offence of manslaughter is abolished except for— (a) the cases for which provision is made by sections 2(3) and 4 of the Homicide Act 1957 (cases which would be murder but for diminished responsibility or a suicide pact); and (b) cases which would be murder but for provocation. 10
Supplementary provisions.	8.—(1) In this Act “injury” means— (a) physical injury, including pain, unconsciousness or other impairment of a person’s physical condition; or (b) impairment of a person’s mental health. (2) This Act has effect subject to any enactment or rule of law providing a defence, or providing lawful authority, justification or excuse for an act or omission. 20 (3) This Act has effect subject to the rules relating to the effect of intoxication on criminal liability.
Consequential amendments.	9. The enactments mentioned in the Schedule to this Act are amended in accordance with that Schedule.
Commencement and saving.	10.—(1) This Act comes into force at the end of the period of two months beginning with the day on which it is passed. 25 (2) This Act does not apply in relation to anything done or omitted before it comes into force.
Short title and extent.	11.—(1) This Act may be cited as the Involuntary Homicide Act 1995. (2) The amendments in the Schedule to this Act have the same extent as the enactments to which they relate but, subject to that, this Act extends to England and Wales only. 30

Schedule

The Government intends to amend section 1 of the Health and Safety at Work Etc Act 1974 to make it clear that one of their purposes is to prosecute offences of corporate killing.

SCHEDULE

Section 9.

CONSEQUENTIAL AMENDMENTS

The Offences Against the Person Act 1861 (c.100)

- 1.—(1) The Offences against the Person Act 1861 is amended as follows.
- 5 (2) In section 9 after “manslaughter”, in the first two places where it occurs, insert “, reckless killing or killing by gross carelessness”.
- (3) In section 10 after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

The Infant Life (Preservation) Act 1929 (c.34)

- 10 2. In section 2(2) of the Infant Life (Preservation) Act 1929 for “manslaughter”, in both places where it occurs, substitute “reckless killing or killing by gross carelessness”.

The Children and Young Persons Act 1933 (c.12)

- 15 3. In the first paragraph of Schedule 1 to the Children and Young Persons Act 1933 after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

The Infanticide Act 1938 (c.36)

4. In section 1 of the Infanticide Act 1938—
- (a) in subsection (1) for “manslaughter” substitute “reckless killing”;
- 20 (b) in subsection (3) after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

The Visiting Forces Act 1952 (c.67)

- 5.—(1) The Visiting Forces Act 1952 is amended as follows.
- (2) In section 7(6) after “manslaughter” insert “, reckless killing, killing by
- 25 gross carelessness”.
- (3) In paragraph 1(a) of the Schedule after “manslaughter” insert “, reckless killing, killing by gross carelessness”.

The Army Act 1955 (c.18)

- 6.—(1) The Army Act 1955 is amended as follows.
- 30 (2) In section 70(4) and (5) after “manslaughter” insert “, reckless killing or killing by gross carelessness”.
- (3) In section 71A(4)(b) after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

The Air Force Act 1955 (c.19)

- 35 7.—(1) The Air Force Act 1955 is amended as follows.
- (2) In section 70(4) and (5) after “manslaughter” insert “, reckless killing or killing by gross carelessness”.
- (3) In section 71A(4)(b) after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

SCH.

The Naval Discipline Act 1957 (c.53)

8.—(1) The Naval Discipline Act 1957 is amended as follows.

(2) In section 48(2) after “manslaughter”, in both places where it occurs, insert “, reckless killing or killing by gross carelessness”.

(3) In section 43A(4)(b) after “manslaughter” insert “, reckless killing or killing by gross carelessness”. 5

The Suicide Act 1961 (c.60)

9. In section 2(2) of the Suicide Act 1961 for “or manslaughter” substitute “manslaughter, reckless killing or killing by gross carelessness”.

The Criminal Law Act 1967 (c.58)

10. In section 6(2)(a) of the Criminal Law Act 1967 after “manslaughter” insert “, reckless killing or killing by gross carelessness”. 10

The Powers of Criminal Courts Act 1973 (c.62)

11. In section 43(1C)(b) of the Powers of Criminal Courts Act 1973 for “manslaughter” substitute “reckless killing or of killing by gross carelessness”. 15

The Bail Act 1976 (c.63)

12. In paragraph 9A(2)(b) of Part I of Schedule 1 to the Bail Act 1976 after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

The Internationally Protected Persons Act 1978 (c.17)

13. In section 1(1)(a) of the Internationally Protected Persons Act 1978 after “manslaughter” insert “, reckless killing, killing by gross carelessness,”. 20

The Suppression of Terrorism Act 1978 (c.26)

14. In paragraph 2 of Schedule 1 to the Suppression of Terrorism Act 1978 after “manslaughter” insert “, reckless killing, killing by gross carelessness”.

The Aviation Security Act 1982 (c.36)

15.—(1) The Aviation Security Act 1982 is amended as follows. 25

(2) In section 6(1) after “manslaughter” insert “, reckless killing, killing by gross carelessness,”.

(3) In section 10(2) after “manslaughter” insert “, reckless killing, killing by gross carelessness,”. 30

The Criminal Justice Act 1982 (c.48)

16. In paragraph 1 of Part I of Schedule 1 to the Criminal Justice Act 1982 after “manslaughter” insert “, reckless killing or killing by gross carelessness”.

The Nuclear Material (Offences) Act 1983 (c.18)

17. In section 1(1)(a) of the Nuclear Material (Offences) Act 1983 after “manslaughter” insert “, reckless killing, killing by gross carelessness,”. 35

The Police and Criminal Evidence Act 1984 (c.60)

18. In paragraph 3 of Part I of Schedule 5 to the Police and Criminal Evidence Act 1984 after “manslaughter” insert “, reckless killing or killing by gross carelessness”. 40

Involuntary Homicide

7

The Coroners Act 1988 (c.13)

SCH.

19.—(1) The Coroners Act 1988 is amended as follows.

(2) In section 11(6) after “manslaughter”, in both places where it occurs, insert “, reckless killing, killing by gross carelessness, corporate killing”.

5 (3) In section 16(1)(a)(i) after “manslaughter” insert “, reckless killing, killing by gross carelessness, corporate killing”.

(4) In section 17(1)(a) and (2)(a) after “manslaughter” insert “, reckless killing, killing by gross carelessness, corporate killing”.

The Road Traffic Act 1988 (c.40)

10 20. In section 172(1)(d) of the Road Traffic Act 1988 for “manslaughter” substitute “reckless killing or killing by gross carelessness”.

The Road Traffic Offenders Act 1988 (c.53)

21. In Part II of Schedule 2 to the Road Traffic Offenders Act 1988 for “Manslaughter” substitute “Reckless killing or killing by gross carelessness”.

15 *The Aviation and Maritime Security Act 1990 (c.31)*

22.—(1) The Aviation and Maritime Security Act 1990 is amended as follows.

(2) In section 14(2) after “manslaughter” insert “, reckless killing, killing by gross carelessness,”.

20 (3) In section 18(2) after “manslaughter” insert “, reckless killing, killing by gross carelessness,”.

The Railways Act 1993 (c.43)

23. In section 119(11) of the Railways Act 1993 in the definition of “act of violence” for “manslaughter” substitute “reckless killing, killing by gross carelessness,”.

25

The Criminal Justice and Public Order Act 1994 (c.33)

24. In section 25 of the Criminal Justice and Public Order Act 1994—

(a) in subsection (2) after paragraph (c) insert—

“(cc) reckless killing;

30 (cd) killing by gross carelessness;”;

(b) in subsection (3) after “manslaughter” insert “, reckless killing or killing by gross carelessness”.