

CORPORATE MANSLAUGHTER: A SUMMARY OF RESPONSES TO THE HOME OFFICE'S CONSULTATION IN 2000

INTRODUCTION

1. In May 2000, the Home Office published its consultation paper *Reforming the Law on Involuntary Manslaughter: The Government's Proposals*¹. This was based on an earlier report by the Law Commission² and contained proposals to reform the law relating to involuntary manslaughter in its application both to individuals and corporate bodies.
2. This paper provides an overview of the responses received during the consultation exercise to the proposals for a new offence of corporate manslaughter. Over 150 responses dealt specifically with this issue. These came from a wide range of organisations covering industry, unions, the public sector and victims' groups, as well as from members of the public.
3. This paper is being published in conjunction with the Government's draft Corporate Manslaughter Bill. The proposals in the draft Bill build on the recommendations of the Law Commission, and proposals set out in the 2000 consultation paper, but have been developed in the light of the consultation exercise and further consideration.
4. The following topics generated the most discussion in responses:

- The need for reform

There was strong support for reform of the law, with the majority of respondents acknowledging that the law as it currently stands is ineffective. A number of respondents questioned the construction of the proposed offence and suggested other routes for reform, including more rigorous enforcement of health and safety legislation.

- Application of the offence

The significant majority of respondents supported a wide application of the offence to cover all undertakings, rather than applying it solely to corporations as proposed by the Law Commission. This extended to

¹ <http://www.homeoffice.gov.uk/docs/invmans.html>

² *Legislating the Criminal Code: Involuntary Manslaughter* (Law Commission Report No 237, HMSO, March 1996). <http://www.lawcom.gov.uk/files/lc237.pdf>

applying the offence to the Crown through the removal of Crown immunity.

- Individual liability

A wide range of responses dealt with this issue with opinions evenly divided. Many respondents considered that disqualification and imprisonment were draconian measures, which would lead to scapegoating, a culture of blame and a risk-averse environment. Many victims' support groups, trade unions and individuals felt strongly that without any individual liability the corporate offence would lack sufficient deterrent force.

- Investigation and prosecution

This subject attracted a great deal of detailed comment and suggestions, with little overall consensus. It was agreed, however, that whichever agency took the lead in investigating and prosecuting the new offence, there would need to be detailed working protocols in place to ensure effective joint-working. There was some support for the creation of a specialised unit to investigate all work-related deaths.

CORPORATE LIABILITY, THE NEED FOR REFORM AND PROPOSALS FOR A NEW OFFENCE

5. Under the current law, before a company can be convicted of manslaughter proof is required that a 'directing mind' is themselves guilty of the offence. A "directing mind" is an individual at the very top of a company, whose decisions and actions can be said to embody the company. Without sufficient evidence to convict such an individual, the prosecution of the company must fail. This way of attributing liability to companies, and other corporate bodies, is known as the identification principle.
6. The result of the identification principle has been that large companies with complex management structures have proved difficult to prosecute for manslaughter. Since 1992 there have been 34 prosecution cases for work-related manslaughter but only six, small, organisations have been convicted.
7. Public concern at this state of affairs has been reinforced by the lack of success in corporate manslaughter prosecutions following a number of public disasters. Examples of high profile incidents include the Herald of Free Enterprise Ferry disaster in 1987 and the Southall rail disaster in 1997; prosecutions failed in both cases.

The Law Commission's proposals for a new offence

To tackle these problems, the Law Commission envisaged a new, specific offence of corporate killing. This would be committed where a management failure in a company was the cause, or one of the causes, of a person's death and the corporation's conduct fell far below what could reasonably be expected. 'Management failure' was defined as a failure in the way in which an organisation managed or organised its activities to ensure the health and safety of employees or those affected by its activities.

The Government sought comments on the proposal for a new offence.

Total number of responses:	102
Agreed³:	80
Disagreed:	20
Other comment:	2
Did not address:	49

8. A large majority of respondents expressed clear recognition of the public policy aims of making the workplace a safer place and ensuring that those organisations responsible for a death through grossly negligent management failures, relating to their obligations to ensure health and safety, should be properly penalised.

'The IoD acknowledges that the current state of the law on involuntary manslaughter is unsatisfactory. Public confidence in parts of the business community has been damaged as a result of some tragic and heavily publicised accidents...We support the proposed introduction for the new offence of corporate killing as originally recommended by the Law Commission.'

Institute of Directors

'Victim Support welcomes the publication of the Government's plans for reform of the law on involuntary manslaughter. We share the concerns of those who have argued that the existing law...of corporate manslaughter (is) ineffective.'

Victim Support

9. However, a number of respondents questioned the need for a new offence. Many of these respondents suggested that health and safety

³ This figure includes respondents who recognised the need for reform but questioned the construction of the proposed offence. Those counted as 'disagreed' explicitly rejected a need for reform.

legislation was adequate to hold companies to account, in particular allowing unlimited fines to be imposed and individuals prosecuted for personal negligence.

‘Unlimited fines and enforcement orders send a strong message to both the management and the shareholders about the importance of safe working practices and leave no one in doubt about the accountability of a company where death or serious injury occurs... [G]reater public attention should be drawn to the significance of a conviction under the Health and Safety at Work Act...this would serve to allay public concern that the current regulatory regime is not sufficiently stringent.’

British Retail Consortium

10. Many of those who either disagreed with, or had reservations about, a new offence were concerned by its proposed construction. They believed that various elements were insufficiently detailed or mistaken. These included:

- The proposed threshold of conduct ‘falling far below’

23 respondents considered that this term needed clarification. A number requested clear standards or guidance. The Transport and General Workers Union suggested that the legislation make reference to current standards under health and safety legislation. Nearly all of those who responded to the Construction Confederation’s own consultation thought there was a need for greater guidance or discussion.

- ‘Management failure’

12 respondents felt that the definition of ‘management failure’ was imprecise and questioned what action or omission actually constituted a management failure.

- Causation

A number of respondents criticised the approach taken by the Law Commission, that the management failure need only be one of several causes of death, as an unfair disregard for the usual principles of causation.

- 12 respondents felt that the risk of death should be obvious and the defendant capable of appreciating it.
- A number of respondents believed that the offence should instead focus on individual failings or directors’ duties.

11. It was suggested by some respondents that the offence should include a defence of 'due diligence', under which a company could not be held responsible if it had taken all reasonable steps to prevent a fatality.
12. A small minority of respondents argued that the proposals would lead to lower health and safety standards, encouraging a risk averse 'blame culture' where people would be unwilling to accept responsibility for health and safety and less inclined to be open with accident investigators.
13. Despite these reservations, the great majority of respondents did support the need for reform and supported the Law Commission's proposals.

POTENTIAL DEFENDANTS

Corporations, unincorporated bodies and undertakings

The Law Commission proposed that the new offence apply to all corporations, apart from corporations sole (which cover a number of individuals' offices). The Law Commission did not propose extending the offence to any unincorporated associations (such as partnerships or trusts) because such bodies do not have legal personality and so the question of attributing the conduct of individuals to the body itself does not arise. However, the Law Commission recognised that, in practice, many of these bodies are indistinguishable from corporations and that arguably their liability for fatal accidents should be the same.

The consultation paper suggested that the offence apply instead to 'undertakings'. This would extend the offence to 'any trade or business or other activity providing employment.'

The Government sought comments on whether the application of the offence to 'undertakings' was preferable to applying it solely to corporations.

Total number of responses: 101

Agreed: 80

Disagreed: 11

Other comment: 10

Did not address: 50

14. A significant majority of respondents favoured an offence that applied more widely than corporations. The proposal to rely on the concept of an

‘undertaking’ was welcomed, although some respondents, such as the British Retail Consortium, asked for a clearer definition of what this would extend to, particularly in light of the supply chains and use of contractors found within the retail sector.

15. Others argued that the offence should be limited to companies formed to make a profit. They were concerned that any wider application could discourage much useful work in the voluntary sector.
16. Alternative methods for defining which organisations the offence should apply to included:
 - Bodies corporate and commercial partnerships.
 - VAT liable bodies.

Government and quasi-government bodies

The principle of Crown immunity means that a number of government and quasi-government bodies are not liable to criminal prosecution because they are said to be acting as a servant or agent of the Crown.

To ensure that these bodies would be held to account in circumstances where the offence would otherwise be prosecuted, the consultation paper proposed an approach similar to that adopted by the Food Safety Act 1990. This would apply the same standards to the Crown but, rather than applying criminal liability, would provide for the courts to make a declaration of non-compliance with statutory requirements requiring immediate action.

The Government sought comments on the application of Crown immunity to the new offence.

Total number of responses:	85
Remove immunity:	76
Retain immunity:	4
Other comment:	5
Did not address:	66

17. A significant majority of respondents to the consultation believed that Crown immunity should not be available in respect of the new offence. Apart from some specific exemptions, it was felt that there was little to justify differential treatment between Crown and non-Crown bodies.

‘Crown bodies and non-corporate bodies should all be subject to the same law as corporate bodies.’

Member of the public

‘[Retaining Crown immunity would allow] those bodies and their management the ability to escape punishments that would be meted out to private undertakings. We consider this is an unacceptable proposal, and not in keeping with the concept of equality before the law.’

Federation of Small Businesses

18. A number of respondents drew attention to the fact that not applying the offence to the Crown would be at odds with the Government’s commitment to remove Crown immunity for the purposes of prosecution under health and safety legislation.
19. A small number of respondents were content with the Government’s proposal to introduce a similar regime to that employed under the Food Safety Act. (Four respondents explicitly endorsed this approach and two regarded it as a suitable alternative if Crown immunity could not be removed).
20. Others expressed concern that the removal of Crown immunity would create problems for certain bodies. The bodies or functions for whom it was suggested that some form of exemption remain, not all of whom are currently covered by Crown immunity, were:
 - Emergency services such as the police and fire brigades.
 - Bodies responsible for national defence and national security.
 - Educational institutions.
 - The National Health Service.

‘...there is a need to ensure protection for those who take on a duty or a role which in turn protects society against life threatening situations and may involve the use of force.’

Association of Chief Police Officers (ACPO)

INVESTIGATION AND PROSECUTION

Who should investigate and prosecute the new offence

In England and Wales it is the responsibility of the police to investigate allegations of criminal activity under the general criminal law, charge the accused and pass the case to the Crown Prosecution Service to determine whether the charge is appropriate and whether to proceed with a prosecution.

The Law Commission did not make any recommendations on this. However, in its consultation paper the Government recognised that there

was a relationship between elements of the proposed offence and the issues investigated in relation to health and safety offences. The consultation paper suggested that duplication of effort might be avoided by empowering health and safety enforcement bodies to investigate and prosecute the new offence in certain circumstances.

The Government sought comments on this proposal.

Total number of responses: 90

Yes, enable health and safety bodies to investigate/prosecute: 48

No, precedence should remain with the police/CPS: 30

Other comment: 12

Did not address: 61

21. This recommendation attracted a great deal of detailed comment and suggestion, with little overall consensus. The suggestion that investigation and prosecution should lie in the hands of the Health and Safety Executive (HSE) or other regulatory enforcement bodies was questioned, with issues cited including:

- Concern that HSE would not have the resources to carry out extra investigations and prosecutions in addition to its current role.
- Potential conflict with related police investigations and difficulties for the investigation if problems had not been identified earlier during inspections.
- Potential inadmissibility in a criminal trial of evidence obtained by the HSE.
- Lack of availability of legal aid for those under investigation by the HSE.

22. However, there were respondents who agreed that the HSE, or other relevant enforcement authority, should investigate cases of corporate manslaughter, in light of their knowledge and experience of work-related deaths.

“There is no reason why, in an appropriate case, a Health and Safety Enforcement Agency ought not to prosecute for the new offence of corporate killing.”

Bar Council

23. An alternative attracting support was the establishment of a separate unit, similar to the Serious Fraud Office and drawing on all relevant agencies' expertise, to investigate and prosecute the new offence and related breaches of health and safety legislation.
24. Short of such a development, many respondents pointed out that there needed to be effective co-operation between the different agencies to avoid duplication of effort and confusion. A number of respondents suggested that this would involve further development of the protocols that already exist between the various agencies. The need for clear arrangements was underlined by the Association of Chief Police Officers (ACPO), the Health and Safety Commission (HSC) and the Crown Prosecution Service (CPS). The CPS made the point (in relation to the consultation paper's proposals) that 'strict protocols would need to be established to ensure that areas of responsibility are clearly defined and that proposed agencies have the relevant and technical expertise.'
25. ACPO recognised the importance of the specialist knowledge and experience of other enforcement agencies. They believed that the police service should retain primacy for investigation, especially scene management, until it had been ascertained that it would be more appropriate for the investigation and/or subsequent initiation of prosecution to transfer to another agency.
26. The HSC recognised the strong practical reasons put forward in the consultation paper for the proposal for HSE to be able to investigate/prosecute the new offence, but were keen that any such extension of their role complemented 'their wider primary role in helping to prevent harm.'

Consent to prosecution

The Law Commission proposed that there should be no requirement of consent (from the Director of Public Prosecutions) to the beginning of a private prosecution for the new offence.

The Government agreed.

Total number of respondents: 17

Agreed: 4

Disagreed: 13

27. Of those responding to this proposal, there was a large majority who disagreed with the suggestion that consent should not be required. In particular concern was expressed at the scope, without such a requirement, for insufficiently well-founded prosecutions to be brought

which would ultimately fail, placing an unfair burden on the company involved.

“The CBI would urge that controls be introduced to prevent private prosecutions being brought for improper motives, otherwise companies (and individuals) may be subject to a substantial amount of publicity in highly charged situations that may lead to irreparable financial and personal harm.”

Confederation of British Industry

Alternative verdicts

The Law Commission also proposed that it should be possible for a jury, if they found a defendant not guilty of the new offence, to convict a company of an offence under section 2 or 3 of the Health and Safety at Work etc Act 1974.

The Government agreed.

28. Whilst this proposal attracted very little comment, some of those who did respond thought that allowing an alternative verdict to be reached would be unacceptable as the proposed offences were not straight alternatives and defences might be different. They also argued that companies, like individuals, should know the charges against them before going to court.

ENFORCEMENT AGAINST COMPANIES AND THEIR OFFICERS

29. As explained above, the Law Commission proposed that the new offence apply to all corporations, apart from corporations sole. The Government’s consultation paper examined a number of practical issues relating to this.

Liability within groups of companies

The consultation paper expressed concern that holding companies should not be able to evade possible liability for a charge of corporate killing by establishing subsidiary companies carrying on the group’s riskier business. Moreover, if liability could not be transferred to parent companies, and the subsidiary did not have sufficient assets to pay the fine, such companies could evade the penalty imposed on them.

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

Total number of responses: 58

Agreed:	51
Disagreed:	5
Other comment:	2
Did not address:	93

30. Most respondents agreed with the Government's proposal. However, this agreement was generally on the strict understanding that the parent company should only be liable where management failings within the parent or other group company had been a direct cause of death.

'We are in support of the proposal to allow prosecuting authorities to take action against parent companies or other group companies if it can be demonstrated that the links within such a structure were instrumental in causing an incident to occur.'

Federation of Small Businesses

"..if a smaller company can prove that they had identified a problem, attempted to fix the problem but were restrained by their parent company, then the parent company should be liable."

Member of the public

31. A small number of respondents suggested that there should be some clarification, possibly statutory, of what parent companies' responsibilities were in relation to health and safety.
32. Some of those who disagreed with the proposal were concerned that the offence would discourage health and safety being taken forward at group level.

Individual liability

The Government agreed with the Law Commission's proposal that there should be no individual liability for the corporate offence itself. The Law Commission further argued that it would not be appropriate to impose individual sanctions in relation to an offence that deliberately stressed the liability of the corporation as opposed to its individual officers. It therefore proposed excluding secondary liability for the offence itself (such as aiding and abetting) on the part of individuals, who would however remain liable to prosecution if their conduct amounted to a specific offence on their part. The Law Commission noted the existence of specific secondary offences for individuals in health and safety legislation, but made no such proposal in relation to the new offence.

In the consultation paper, the Government expressed concern that the Law Commission's proposals could fail to provide a sufficient deterrent.

The Government sought 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) a proposal that culpable officers should be disqualified from acting in a management role in any undertaking; and***
- (c) whether it was right in principle that officers of undertakings who contributed to the management failure resulting in death should be liable to a penalty of life imprisonment in separate criminal proceedings.***

Total number of respondents:	105
Yes, some form of individual sanctions:	57
No:	45
Other comment:	3
Did not address:	46

33. These proposals generated the most comment from respondents, with views being evenly split. They received strong support from, amongst others, victims' support groups and trade unions. Many of these argued that without individual penalties, officers within large companies would not be sufficiently concerned by the prospect of a large corporate fine to take greater personal responsibility for health and safety. These arguments were frequently related to the need to introduce a statutory requirement for companies to have nominated health and safety directors.

'...although the accountability of 'companies' is important, public policy demands that criminal sanctions should be primarily directed at the criminal conduct of company directors... Directors would be much more efficiently deterred from placing the lives of workers and public at risk if they knew that they themselves could face serious sanctions unless they ensured that their companies were safe.'

Centre for Corporate Accountability

34. Such arguments were strongly countered by those who were concerned that directors would face individual sanctions in circumstances where there would be insufficient evidence for a conviction under an individual offence.

"It is wrong in principle that an individual should be subject to personal sanction in circumstances where he could not be convicted of an individual offence."

Federation of Tour Operators

35. The argument that health and safety could only be improved by targeting individual directors was countered by a number of points:

- Personal liability would make people less co-operative with an investigation into the corporate offence, undermining the effectiveness of corporate prosecutions.
- In the absence of sufficient evidence for an individual prosecution, there would be difficulty in identify which individual should be liable. Identifying a director responsible for health and safety and targeting them would lead to this person becoming a scapegoat and create difficulties in encouraging people to take on the role. Such a proposal could also lead to a decline in health and safety, as this needed to be an organisation-wide priority and not the sole responsibility of one individual director.

36. In terms of what sanctions might be appropriate (if action were taken against individuals), there was more support for disqualification than for imprisonment. A number of respondents who supported disqualification added caveats that time limits should be imposed and disqualification limited to management roles within the same sector or from positions with health and safety responsibilities. One respondent pointed out that disqualification from acting in a management role was already possible under company legislation.

‘Any individual, responsible for a management failure, causing a death should be subject to disqualification from acting in a management role.’

Member of the public

‘There may be some justification for disqualification where a director... had a direct and leading involvement with the decision that led to a charge of corporate manslaughter; and the chain of events from the decision to the accident was reasonably foreseeable... to that individual. Disqualification...might be justified for a period of no longer than, say, seven years.’

Construction Industry Council, August 2000

37. However concerns were still expressed that disqualification, particularly disqualification for life, could be a draconian punishment which was;

- sweeping and could deprive someone of his or her livelihood, and
- difficult to enforce as there was no one definition of a management role.

38. The proposal that officers who contribute to a management failure should be liable to imprisonment was strongly contested by almost half of those responding. Where a strong causal link could be shown between a

person's action (or inaction) and death, existing offences for which individuals could be prosecuted, including section 37 of the Health and Safety at Work Act etc 1974, already provide for imprisonment. Without evidence of such a link, some respondents suggested that such a sanction would infringe a person's human rights. It was argued that the proposal could lead to the creation of a risk-averse culture and a stifling of entrepreneurial activity. And that a conviction of corporate manslaughter would lead to sufficiently serious repercussions and consequences for the corporation and relevant managers without the need for individual sanctions such as imprisonment.

'The government should seek to provide a mechanism for dealing with the worst offenders with the introduction of the reckless killing offence, but not to create a climate of fear within the managerial world.'

Confederation of British Industry, September 2000

Insolvency and dissolution of companies

The consultation paper expressed a concern 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. The paper suggested that certain measures, such as continuing proceedings against an insolvent company or freezing assets, should be considered to prevent this. However, such proposals would represent a significant extension of the powers available in such a situation and would have to comply with the fundamental principle that a person is 'innocent until proven guilty'.

The Government invited views on whether criminal proceedings should be allowed to continue after the formal insolvency of a company.

Total number of responses:	51
Yes, proceedings should continue:	42
No, proceedings should not be allowed to continue:	4
Other comment:	5
Did not address:	100

39. In general, respondents welcomed this proposition. However, there were observations on how practical this would be.

- A formally insolvent company could not be represented, defend itself against charges or have penalties imposed on it.
- It was suggested that there are already powers in company legislation to reverse insolvency, and liquidators can reverse improper transactions.
- Not being able to prosecute an insolvent company need not be inequitable, as company officials could still face charges. However, this would not be possible if there were no individual liability for the offence.

The Government also asked for 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 for the new offence.

Total number of responses:	75
Yes, it would be appropriate:	36
No, never:	25
Other comment:	14
Did not address:	76

40. The figures above suggest that a majority of respondents on this point believed that it would be appropriate to freeze a company's assets. However, many of these were clear that such a measure should only be used if there was firm evidence that a company was about to take action to evade fines.

41. There was concern that freezing assets would have a detrimental impact on innocent employees:

'In particular the company should be left with sufficient resources to continue in its day-to-day activities, to protect both the company and employment. Prior to it being found guilty, a company should not suffer permanent damage.'

Transport and General Workers Union

42. The Bar Council suggested that, in order to avoid this:

'The court ought to be given powers to freeze part of the assets of the company, amounting to a figure judged to be sufficient to discharge any financial penalty and costs order made against it in the event of conviction... this could be likened to the taking of a deposit from a defendant as a condition of his bail. It is not thought

that these powers would be in breach of the European Convention of Human Rights.’

Bar Council/Criminal Bar Association

43. In addition to concerns about the impact on innocent employees and creditors, a number of respondents strongly opposed the proposal on the basis that it contravened the general principle that a person is innocent until proven guilty:

‘(EEF) strongly opposes [this proposal] ... [which] contravenes the general principle that a person is innocent until proven guilty. Freezing of assets would deal a serious blow to a company’s ability to continue trading, before and after the prosecution, whether or not the company is acquitted.’

Electronic Engineers’ Federation (EEF)

44. Other ways of ensuring a company did not evade its liabilities were suggested, including:

- Requiring a company to put up a bond, instead of freezing its assets.
- Appointing an independent administrator to run the company pending the outcome of the prosecution.
- Making non-standard transactions subject to the approval of a person appointed by the court, to ensure money is not improperly transferred out.

PENALTIES AND REMEDIAL ORDERS

As an offence for which organisations (rather than individuals) would be convicted, the appropriate penalty would be a fine. In terms of addressing the failure that led to death, the consultation paper noted that, in many cases, the HSE or other enforcement bodies would use their powers to issue enforcement notices during or following investigations. However, in addition to this power, the Government accepted the Law Commission’s recommendation that, if an undertaking is found guilty of corporate killing, the court should also have the power to make remedial orders. Applications for orders would be made in consultation with the relevant enforcement body. Both the prosecuting agency and defence would have the opportunity to make representations or call evidence regarding the application.

45. The vast majority of respondents made no specific comment in relation to penalties or remedial orders. Of those who commented on remedial orders, 6 were in favour and 4 against.
46. It was suggested that the power to make remedial orders was best left to the HSE, or other specialist enforcement agencies. Such agencies were aware of the wider picture across the industry and would be able to make the most appropriate order.

'... (the enforcing authority) is likely to take a decision after consultation with the industry member and in light of its knowledge of other changes taking place in the industry...'

Railtrack PLC

47. Whilst some respondents emphasised the importance of a right of appeal against any penalty or remedial order, others rejected the proposal:

"We do not believe that the courts should be allowed to enforce any remedy in addition to a fine. This power could, over time, create a mass of onerous and inconsistent regulations."

Institute of Directors

48. A number of respondents also proposed compulsory re-training for offending companies and compensation for relatives.

49. More widely, a handful of respondents proposed a range of alternative penalties including equity fines, fines linked to profit or turnover, and corporate probation. The TUC argued that such sanctions were more attractive than fines because of the impact of a large fine on employees:

'One of the drawbacks with fining an employing organisation ... is that the innocent can suffer more than the guilty. In the most extreme cases, the death of a co-worker could see the company shut down and all their colleagues forced into unemployment – while the Directors responsible might escape to form another company almost immediately.'

Trades Union Congress

TERRITORIAL APPLICATION

The general rule is that nothing done outside of England and Wales is an offence under English criminal law. An exception to this is that the English courts have jurisdiction over its subjects for offences of homicide committed abroad, including manslaughter, although this exception does not apply to corporations.

The Law Commission recommended that this general position be maintained and companies be liable for the new offence where the injury causing death was sustained within the jurisdiction of the English courts. This would extend the offence to England and Wales, incidents causing death aboard UK flagged ships and planes and within UK territorial waters.

The consultation paper set out the considerable practical difficulties to which extra-territorial jurisdiction would give rise and on balance agreed with the Law Commission's proposals. However, jurisdiction would not depend on where a company had been incorporated (in the UK or abroad). This would mean that foreign companies operating within the

jurisdiction of the English courts would be equally liable for the new offence.

Total number of respondents:	25
Agreed:	7
Disagreed:	11
Other comment:	7
Did not address:	126

50. A small number of respondents argued strongly that British companies should be liable for the offence of corporate killing *no matter where the offence occurred.*

“It is inconsistent to allow prosecution of companies for corruption abroad but not for homicide abroad.”

Greater Manchester Hazards Centre

51. Some respondents specifically referred to the importance of there being an equal playing field across the United Kingdom and were concerned that any new legislation should also apply to Scotland and Northern Ireland.
52. The majority of respondents agreed with the Government that foreign companies operating in Britain should be liable for the offence where the injury leading to death occurred in England and Wales.