

CBI SCOTLAND SUBMISSION TO THE SCOTTISH EXECUTIVE EXPERT GROUP INQUIRY INTO CORPORATE HOMICIDE

CBI Scotland endorses the very highest levels of corporate responsibility and does not wish to see the justifiably good health and safety record of the majority of Scottish businesses tarnished by the activities of a few companies.

We are not convinced, however, that a new offence needs to be created when there is already extensive legislation and a range of developments and initiatives from various Government departments and agencies that are designed to protect employees, customers and the public.

The safest workplaces are those where there is shared responsibility for health and safety and where every single employee accepts their responsibility for their own safety and the safety of their colleagues. Establishing a 'blame' culture and focusing the responsibility for health and safety on specific individuals or levels of management may undermine this collective approach. It may even make some employees take less responsibility for their own health and safety, and that of their colleagues, undermining the work done by most organisations to engender a culture of collective responsibility.

In the event that a decision is taken to proceed with legislation establishing a new offence of corporate homicide in Scotland, the business community would expect to see the legislation comply with the principles of good regulation/legislation, which has been endorsed at the very highest levels of the UK Government. In particular it should be:

- applied to organisations and not individuals
- applied to all undertakings; Crown Immunity should be limited to matters of national security – any other approach would be inequitable
- applied to behaviour that grossly negligently disregards foreseeable risks to employees and the general public
- related to a duty holder's obligations for the reasonably foreseeable identification and evaluation of risks and the reasonably practicable control of risks
- related to a continuing and systematic failure to assess and control risks rather than an isolated lapse within a well-established system, not be founded on aggregation of a number of unlinked faults, that had been appropriately managed, to paint a picture of systemic failures
- consistent with legislation adopted elsewhere in the UK.



Under no circumstances should higher duties of care be imposed on Scottish businesses. If different standards are applied in Scotland then it could create operational problems for organisations with multiple sites in Scotland and other parts of the UK. Applying higher duties on organisations in Scotland, when there is no evidence to suggest that health and safety standards are lower, will be a significant barrier to attracting and retaining company headquarters to this country, something that we need to do to improve our historically low levels of economic growth.

Equally significantly, it may distort the market for recruiting top quality management and adversely impact on the calibre of people willing to take on senior management roles. Scotland has world class businesses but needs to get more firms operating at this level. There are business people who have the expertise and skills to facilitate this transformation and we have to make sure that they want to contribute. They may choose not to because of the perceived risk to their reputation. Scotland will be much poorer, and its workplaces less safe, without them.

We do not believe that it is appropriate to create a new offence covering individual directors and we are pleased that the draft Home Office bill does not plan to impose any new liability on individuals. We strongly urge the adoption of a similar approach in Scotland.

There is likely to be an increase in costs and a danger that businesses will be more risk averse. The additional costs that may arise are difficult to accurately quantify. But there are some obvious examples: insurance and legal costs; the cost of introducing new health and safety procedures (and training); and the 'cost' to a firm's brand or reputation (an area in which more businesses are investing than ever before).

This latter point may be especially problematic for organisations that are contemplating expanding or moving their business away from their core expertise in some way. If, in order to protect themselves from prosecution, these firms have to put in place such complex and onerous safety processes and procedures that the cost of the new venture rises significantly, then they may decide not to proceed. Similarly, if they perceive any threat to their overall corporate reputation, they may not proceed. This is a potential barrier to the dynamic and innovative economy that we need to develop in Scotland as a matter of priority.

Please refer to the accompanying paper from the CBI London for comments on the Home Office's definition of "senior management" and on the status of Crown immunity with regard to any new offence.

We are not familiar with the legal reforms in Australia and Canada so are not in a position to comment on their relevance to Scotland.

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