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HEALTH AND SAFETY COMMISSION

CORPORATE MANSLAUGHTER - GOVERNMENT'S REPLY TO SELECT COMMITTEES' REPORT

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Issue

1. The Government's reply (Annex 1) to the Joint Report from the Home Affairs and Work and Pensions Select Committees on the draft Corporate Manslaughter Bill and the key issues for HSC/E.

Timing

2. Routine. For Information.

Recommendation

3. That the Commission note the current position.

Background

4. The Home Affairs and Work and Pensions Committees published their joint report into the Government's draft Corporate Manslaughter Bill on 20 December 2005.

The key issues of specific interest for HSE and DWP were the committees recommendations for:

- introduction of specific legislation on Directors' Duties in the Bill or shortly afterwards (Recommendation 53);
- secondary liability for Directors to be introduced via the Bill (use of section 36 & 37 of the Health and Safety at Work etc. Act 1974 (HSWA) as a model) (Recommendation 51);
- removing Crown immunity for health and safety offences via the Bill (Recommendation 32); and

- a request for statistics on the prosecutions of large unincorporated bodies (Recommendation 3).

Argument

5. On these key issues, the Government's response published on 8 March 2006 was as follows:

- Directors' Duties (Chapter 13) - the Government recognises the importance of strengthening individual responsibility and accountability for health and safety management and is waiting for the HSC to advise Ministers, probably in the late Spring.
- Secondary Liability (Chapter 13) – the Government recognises that current offences including manslaughter and health and safety laws already cover individuals who have acted recklessly or been grossly negligent and caused death, as well as those who have contributed to health and safety failures. Consequently, they consider this Bill not the right place to review this framework for additional liabilities.
- Removing Crown immunity (Chapter 10) - the Government is looking carefully at how far the removal of Crown immunity for Corporate Manslaughter could serve as the basis for removing immunity for health and safety and fire safety offences and, if so, whether the same vehicle could be used to achieve this, but would not want this to jeopardise the Bill's timetable.
- Statistics on Unincorporated Bodies (Chapter 2) – the Government's response includes some information on prosecutions and convictions provided by HSE. HSE was expected to provide information on prosecutions and convictions for health and safety offences for large unincorporated bodies. No information was available because HSWA applies equally to both incorporated and unincorporated bodies. Neither HSE nor the local authorities have any reason to record separately the status of different bodies or organisations, however, some information on offences involving some partnerships and trusts was available.

6. The main success for HSC/E is that the Government has agreed to look carefully at removing immunity for health and safety and fire safety offences on the same basis as that proposed in the Bill for Corporate Manslaughter. Despite the proviso about the Bill's timetable and the fact that this is not full removal, it does represent substantial progress in achieving a key policy objective for HSC/E and DWP and the best possible outcome in the circumstances. HSE officials have been working very closely with those at the Home Office to get this commitment. It will go a considerable way to having a level playing field to ensure that Public and Private service providers will be accountable in the same way when performing similar functions. Most public bodies such as LAs, the police and fire service and the NHS are already fully within the scope of HSWA and so the Crown's continuing exemption from enforcement is increasingly anomalous.

7. The areas that will retain immunity from prosecution fall outside HSE's priorities. For example, military operations, public policy decisions etc. The exemptions in the draft Bill are:

- Exclusively Public Functions (eg holding people in custody);
- Public Policy Decisions (eg allocation of resources to services);
- Operational Military Activities; and
- Provision of Service/Goods by an organisation other than to individuals (eg decisions about the organisation of benefit payment provision).

8. The Home Office Bill Team will now begin to work on the revisions necessary to the draft Bill before it can be laid before Parliament, including the sharpening of the drafting for the exemptions mentioned above. **HSE officials, along with those in DWP, will continue to work closely with them in order to achieve the removal of crown immunity for health and safety offences.** The draft Bill offers the first real opportunity for 5 years to deliver the Government's longstanding commitment. Lord Hunt, the DWP Minister has been briefed by HSE officials on this and is planning to have discussions with Ministers at the MOD and Home Office, the main departments who would be affected by removing Crown immunity, to agree how to positively progress this issue.

Consultation

9. Enforcement Policy Unit has consulted widely across interested Divisions within HSE during the development of HSE's responses to the Home Office's Bill team and in the preparation of briefing for DWP Ministers.

Costs/Benefits and Financial/Resource Implications for HSE

10. No costs/benefits or significant implications are identified at this stage.

Action

11. To note developments thus far.

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