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HEALTH AND SAFETY COMMISSION

CORPORATE MANSLAUGHTER BILL – DRAFT HSC RESPONSE

A Paper by Jonathan Russell, Band 2 and Michael Madeley, Band 3, Cross cutting Interventions Division

Board member lead: Giles Denham

Cleared by Jonathan Rees on 22 April 2005

Issue

1. The HSC's response to the proposals in the draft Corporate Manslaughter Bill. Securing legislative change in this area is part of the enforcement strand of HSE's Policy Programme - getting the right incentive regime for health and safety in place.

Timing

2. The Home Office seek comments on the proposals by 17 June.

Recommendation

3. That the Chair reply on the lines of **Annex 1**, welcoming the proposals at **Annex 2**.

Background

4. Proposals for a new offence of corporate manslaughter have been under development for some years. They aim to improve the existing common law position, where it is hard to secure a corporate manslaughter conviction against all but very small companies because of the difficulty of identifying a single "directing mind" as culpable.
5. In 2000 the Home Office issued a consultative paper proposing a new corporate manslaughter offence, based on Law Commission proposals. The HSC responded in supportive terms. Since then HSE has engaged in ongoing dialogue with the Home Office to provide continuing support for the proposals and to secure the removal of Crown Immunity. The Home Office has now issued the proposals at Annex 2 for consultation and comment.
6. The Bill has been welcomed by the TUC, though some individual trade unions would like the proposals to be amended to cover, for example, custodial sentencing for directors. The CBI considers that greater precision is needed on which senior managers are covered, and that any law should apply equally to the public sector.

Argument

7. We can wholeheartedly support these proposals. Although the new offence would not be part of health and safety law - prosecutions would be led by the Crown Prosecution Service, with the consent of the Director Public Prosecutions and after a police investigation – it will introduce an important new option for certain very serious senior management failures which result in a fatality. Prosecutions would be of the corporate body, not individuals. The ability to prosecute directors or other individuals under health and safety law or the general criminal law, in appropriate cases, will be unaffected.
8. For an offence under the Bill to be proven, there must be very serious management failings that amount to a gross breach of a duty of care. This is the sort of high threshold that applies the current unsatisfactory common law offence, and that remains appropriate for an offence of this gravity. Manslaughter charges against corporate bodies will therefore continue to be relatively rare. However the new offence will add to the overall deterrent effect of health and safety penalties.
9. The draft Bill largely removes the Crown immunity that applies to the existing common law corporate manslaughter offence. This is very welcome, and consistent with HSC's policy (supported by DWP) to secure the removal of Crown immunity for health and safety offences. Some limited Crown immunity is retained: there is an exemption for the armed forces in relation to combat operations (including realistic training exercises), and also for "exclusively public functions" which would include the custody of prisoners and civil emergency situations. We will discuss these detailed provisions with the Home Office. Consistency is desirable in the extent of residual Crown immunity as between the Bill and health and safety law, especially as the CPS may want to bring both health and safety and corporate manslaughter charges in a single case. It would also clearly be undesirable to roll back established public sector accountabilities for health and safety.
10. The Bill may also provide an opportunity to achieve certain other enforcement policy objectives which are the subject of specific action points (numbers 7 and 15) in *Revitalising Health and Safety*:
 - as mentioned above, the removal of Crown immunity in relation to health and safety offences; this would provide a level playing field for Crown and non-Crown bodies;
 - an increase in the maximum fines available to the lower courts¹ (avoiding the need for magistrates to remit cases to the Crown Court if they find their sentencing powers inadequate); and
 - an increase in the range of circumstances in which imprisonment may be imposed.²

We intend to pursue these objectives in discussion with the Home Office and DWP. Informal discussions have been positive so far, although HSE/DWP would need to seek Whitehall clearance independently of the Bill. Increases in maximum fines chime

¹ Currently £20k for offences under sections 2-6 HSWA, and £5k in most other cases.

² Currently imprisonment (up to two years) is mainly for breaches of prohibition notices.

with Hampton recommendations and may be swept up with Hampton work if it moves forward quickly.

Consultation

11. We have discussed a possible HSC response with the Home Office and DWP. This paper has been seen by legal and economic advisers.

Presentation

12. We propose placing the HSC's response on the HSE website.

Costs and Benefits

13. In relation to the Corporate Manslaughter proposals the Home Office paper identifies costs of £14m a year to industry. HSE economists have provisionally assessed costs of between £2k and £30k a year resulting from possible additional prosecution costs associated with the removal Crown immunity.

Financial/Resource Implications for HSE

14. No significant implications are identified.

Other Implications

15. The Bill applies only in England and Wales. Criminal law in Northern Ireland is the responsibility of the Secretary of State for Northern Ireland and is a devolved matter in Scotland. The Secretary of State intends to consult on extending the Bill's provisions to Northern Ireland. Scottish Ministers will be consulting separately on proposals for reforming Scottish law.

Next steps

16. Depending on Government priorities after the Election, the Bill may proceed to pre-legislative scrutiny by a Parliamentary Scrutiny Committee, which would take evidence from interested parties and report back to Government. The Bill may be introduced into Parliament late in the next Session, which ends in October. We will keep the Commission informed at key stages.