

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

EXPLANATORY NOTES

BACKGROUND

8. Prior to this legislation it was possible for a corporate body, such as a company, to be prosecuted for a wide range of criminal offences, including manslaughter. To be guilty of the common law offence of gross negligence manslaughter, a company had to be in gross breach of a duty of care owed to the victim. The prosecution of a company for manslaughter by gross negligence was often referred to as “corporate manslaughter”. As the law stood, before a company could be convicted of manslaughter, a “directing mind” of the organisation (that is, a senior individual who could be said to embody the company in his actions and decisions) also had to be guilty of the offence. This is known as the identification principle. Crown bodies (those organisations that are legally a part of the Crown, such as Government departments) could not be prosecuted for criminal offences under the doctrine of Crown immunity. In addition, many Crown bodies, such as Government departments, do not have a separate legal identity for the purposes of a prosecution.
9. In 1996 the Law Commission’s report “Legislating the Criminal Code: Involuntary Manslaughter” (Law Com 237) included proposals for a new offence of corporate killing that would act as a stand-alone provision for prosecuting companies to complement offences primarily aimed at individuals. The Law Commission’s report, including its proposals on corporate killing, provided the basis for the Government’s subsequent consultation paper in 2000 “Reforming the Law on Involuntary Manslaughter: the Government’s Proposals”. These papers, and a summary of responses to the consultation paper, are available on the Home Office website (www.homeoffice.gov.uk).
10. A draft Corporate Manslaughter Bill (Cm 6497) was published in March 2005. This set out the Government’s proposals for legislating for reform and proposed an offence based on the Law Commission’s proposals, with some modifications, including the application of the new offence to Crown bodies. The draft Bill was subject to pre-legislative scrutiny by the Home Affairs and Work and Pensions Committees in the House of Commons that autumn. Their report was published in December 2005 (HC 540 I-III) and the Government responded in March 2006 (Cm 6755).
11. Although Scots criminal law on culpable homicide differs from the law of manslaughter elsewhere in the UK, the same issues of identifying a directing mind have arisen in Scotland. In 2005 the Scottish Executive established an Expert Group to review the law in Scotland on corporate liability for culpable homicide. The Group reported on 17 November 2005 and the report and other papers are available on the Scottish Executive website (www.scotland.gov.uk)