



Northern
Ireland
Office

Consultation Document

Corporate Manslaughter: Northern Ireland

Proposals for a new offence

Comments on these proposals are invited and should be made to the following address by 25 August 2005:

Criminal Law Branch
Massey House
Stormont
BELFAST
BT4 3SX

May 2005

Existing Law

1. At present a company can be prosecuted for gross negligence manslaughter under the common law. This law also applies to certain public organisations, but not to others. The weakness of the current law has been that to secure a conviction it is necessary to prove that a “directing mind” of the company (ie someone at the very top of the organisation who can be said to embody the company in his actions and decisions) is himself guilty of manslaughter. Successful prosecutions have been very rare, and these have been mainly of small companies. Public concern about this has grown following major incidents such as with the ferry *Herald of Free Enterprise* (1987) and the Southall rail disaster (1997), where prosecutions failed. The Government is committed to reform; in March 2005 the Home Secretary published proposals for England and Wales.

New Law

2. Proposals for a statutory offence of corporate manslaughter have been developed for England and Wales which build on existing law but tackle its basic weakness. Also, Crown organisations are to be bound by the new offence, though the offence would not apply to the taking of public policy decisions or core public functions (described in more detail in the Home Office’s proposals), whether performed by a Crown body, otherwise by the public sector, or by a private sector organisation.

The New Offence

3. Under the proposals for England and Wales an organisation will commit an offence if the way in which its activities are managed or organised by its senior managers causes a person’s death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. “Senior managers” (those who play a significant role in managing the organisation as a whole, or a substantial part of it); “gross” breach (conduct falling far below what can reasonably be expected in the circumstances); and “relevant duty of care” are all defined in detail.

4. The offence will apply to a body (whether private or public) that owes a duty of care as an employer or occupier of land, or when supplying goods and services, or when carrying on a commercial activity. The relevant duties of care are under the law of negligence which is partly common law, partly statute law. These include, for example, duties to the users of goods and services as well as to employees.

5. The new offence will apply to bodies corporate regardless of where they were incorporated. The existing criminal liability of individual directors will not be affected, and the new offence will not apply to “corporations sole” as such. Individuals will continue to be liable under existing manslaughter law.

6. Prosecutions of the new offence will require the consent of the Director of Public Prosecutions. As at present, the penalty on conviction will be an unlimited fine, but the court will also be able to order the organisation to take remedial action.

Application to the Crown

7. The current offence of gross negligence manslaughter applies to a wide range of bodies in the public sector, including local authorities, NHS trusts and the vast majority of statutory bodies. However, several public organisations, such as government departments, are protected at present from prosecution by Crown immunity.

8. There is to be no general Crown immunity under the proposed new law of corporate manslaughter. Public bodies incorporated by statute are covered, as well as those incorporated by Royal Charter. In addition, the draft Bill sets out in a schedule a list of Crown bodies covered by the offence. The Home Office is still developing this list, and in particular the position of executive agencies. The proposals cover all these public bodies, whether incorporated or not, at least in their capacity as employer or occupier.

9. However, the proposals also take account of the existing public accountability mechanisms (eg through Parliament and the judiciary) which will continue. The provision itself (by private or public bodies) of certain core public services is exempt (ie those provided under the royal prerogative, such as civil emergency services, or which are a *type* that requires statutory authority, such as functions relating to the custody of prisoners). In addition, public authorities will rarely owe a duty of care where a decision involves weighing competing public interests dictated by financial, economic, social or political factors – and such decisions are explicitly exempt. It is expected that police forces will be covered, though the precise mechanism has yet to be identified; and special provision is made in the draft Bill for the Armed Forces.

Northern Ireland

10. In Northern Ireland the law in key areas relevant to these proposals (such as health and safety, negligence and manslaughter) is substantially the same as that in England and Wales. As a rule this is deliberately the case with key protections for those in employment and the general public. There are also practical advantages in this to corporations operating in both jurisdictions. Accordingly, the Government believes that the same proposals should be consulted upon in Northern Ireland and, subject to that consultation, that the Bill to be brought forward in due course for England and Wales should be extended also to Northern Ireland.

Equality Impact

11. Section 75 of the Northern Ireland Act 1998 requires public authorities to have due regard to the need to promote equality of opportunity and to have regard to the desirability of promoting good relations between certain groups of people. The proposals target the liability of corporations rather than individuals. Following a screening of the proposals, we do not expect that any section 75 group will be more or less adversely affected by them.

Regulatory Impact Assessment

12. The Home Secretary has published a regulatory impact assessment (“RIA”) of his proposals for England and Wales. He will continue to develop the RIA in the light of any comments and information he receives. The identified costs (£14.5m) amount to less than 0.1% of the costs of work-related injury, so even a small reduction in work-related deaths and injury would allow costs to be fully met. In principle the same kind of costs and benefits may be expected in Northern Ireland. No separate RIA has been prepared for Northern Ireland; however, the Home Office’s RIA has been reproduced on NIO’s website at http://www.nio.gov.uk/corporate_manslaughter_northern_ireland_regulatory_impact.pdf , with an explanatory introduction for Northern Ireland. Respondents in respect of Northern Ireland are invited to comment on the RIA and to provide any information which would help us to develop our assessment of potential impact. The address to send such comments and information is given at paragraph 15 below.

Consultation points

13. Consultation is continuing in England and Wales both in Parliament (pre-legislative scrutiny is expected) and amongst the wider public. In particular, the Home Secretary has asked for views on the definition of senior manager, and on the proposal to exclude unincorporated bodies from the scope of the offence. He has also indicated that further work is needed to develop the list of government bodies included in the schedule to the draft Bill, and he has invited respondents to provide further information to help assess the regulatory impact of the proposals. Accordingly, the Secretary of State for Northern Ireland would welcome comments, from any interested persons, on the extension of the proposals to Northern Ireland, including the specific issues on which the Home Secretary has himself invited comment. Responses, including additional information, are also invited on the draft regulatory impact assessment – see paragraph 12 above.

14. If you have any concerns or complaints about the consultation process, you should contact the Northern Ireland Office’s consultation co-ordinator, Dr Jim Alford, on 028 9052 7015, or by e-mail at jim.alford@nio.x.gsi.gov.uk . Alternatively, you may write to him at the Central Management Unit, Northern Ireland Office, Stormont House, BELFAST, BT4 3SH.

Responses

15. Any comments for Northern Ireland should be sent, to Criminal Law Branch, Northern Ireland Office, Massey House, Stormont, Belfast, BT4 3SX, Fax: 028 9052 7507, or e-mailed to cjpb@nio.x.gsi.gov.uk . Responses should arrive by 25 August 2005. Those who respond should include their name and a contact address.

16. The information you send us may be passed to colleagues in this and other government departments. It may also be published in a summary of responses received. More generally, all information in responses, including personal information, may be subject to publication or disclosure under freedom of information law. If you request confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request

should explain why confidentiality is necessary. An automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you include a request, with an explanation, in the main text of your response.

Additional copies

17. This document, the Home Office's consultation document and the Regulatory Impact Assessment are available on the Northern Ireland Office website at the following links:

Home Office consultation:

[http://www.nio.gov.uk/corporate_manslaughter_the_government_draft_bill_for_ref orm_\(home_office\).pdf](http://www.nio.gov.uk/corporate_manslaughter_the_government_draft_bill_for_ref orm_(home_office).pdf).

Regulatory Impact Assessment:

http://www.nio.gov.uk/corporate_manslaughter_northern_ireland_regulatory_impac t.pdf

Copies of this document are also available free of charge from Criminal Law Branch, telephone 028 9052 7264 (or see paragraph 15 above for alternative contact details).

18. The documents may be made available, on request, in different formats for individuals with particular needs. A text-phone request facility is also available by phoning 028 9052 7668.

Closing date

The closing date for the receipt of responses is 25 August 2005.

Consultation criteria

The Government's general consultation criteria are:

- * consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy;*
- * be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses;*
- * ensure that the consultation is clear, concise and widely accessible;*

* *give feedback regarding the responses received and how the consultation process influenced the policy;*

* *monitor the department's effectiveness at consultation, including through the use of a designated consultation co-ordinator; and*

* *ensure that consultation follows better regulation best practice, including carrying out a regulatory impact assessment if appropriate.*

CORPORATE MANSLAUGHTER : NORTHERN IRELAND

SUMMARY OF RESPONSES TO PUBLIC CONSULTATION

Introduction

This note summarises the responses received by the Northern Ireland Office to its public consultation on proposals for a new offence of corporate manslaughter in Northern Ireland [see: “Corporate Manslaughter : Northern Ireland : proposals for a new offence, May 2005” – available on the NIO website at www.nio.gov.uk .] The new offence is aimed at enabling prosecutions against organisations in circumstances where an organisation has caused the death of an employee or a member of the public through gross negligence as a result of the way the organisation was managed at senior level. The proposed offence mirrors that proposed for England and Wales by the Home Secretary [see: <http://www.homeoffice.gov.uk/documents/2005-corporate-manslaughter/>]. Those are currently the subject of pre-legislative scrutiny by parliamentary committee at Westminster.

In all, 18 responses were received in Northern Ireland - from companies, the Democratic Unionist Party, district councils, harbour authorities, Health and Social Services Boards, professional representative bodies, unions and the University of Ulster. A full list of the respondents is given at Annex A.

Overall response

Respondents broadly welcomed the proposed new offence. Some felt that it did not go far enough; others welcomed the suggestion that the same offence be adopted in Northern Ireland as in England and Wales. Most comments related to the detail of the offence as proposed.

Senior manager

Some respondents felt that the proposed definition of “senior manager” might lead to difficulties of interpretation and a number of them made specific suggestions to clarify it.

Gross breach

One respondent saw difficulties in interpretation being likely to arise in determining conduct that falls far below what can reasonably be expected of the organisation in the circumstances. However, another felt that because negligence needs to be gross, minor oversights or omissions will not be criminalised, but only conduct with the most serious of outcomes.

Duty of care

The reference to weighing competing public interests was welcomed. However, it was also important that exclusions under clause 4(2) of the Home Office's draft Bill do not prevent a case being made against a government client regarding a gross breach committed in the procurement, planning or management of a project.

DPP consent to prosecution

One respondent said this requirement was a sensible way to avoid inappropriate prosecutions.

Sanctions

Noting the UK Major Ports' response to the Home Office, one respondent supported proposals to remove the threat of imprisonment for a director of a company found guilty of corporate manslaughter. In the view of one respondent, the main deterrent of the new offence is likely to be the damage to a company's reputation. Companies should therefore take their duties more seriously. However, they might become more risk-averse.

Health and safety legislation or guidance

A number of respondents felt that for some sectors the only realistic and authoritative benchmarks for determining management failure in such serious offences are health and safety legislation, HSE-approved codes of practice and HSE guidance. There was also concern that the jury will be permitted to have regard to *any other matters* they consider relevant; this appeared to undermine the principle that the Bill should reinforce the current statutory framework for health and safety. "Any other matters" should be clarified.

One suggested that the Bill should recognise the commitment of senior managers who have implemented the OHSAS 18001 Safety Management Specification within their organisations.

Another suggested that to assist compliance the Government should produce an associated code of practice on corporate health and safety responsibilities that would further clarify what is required of organisations, their boards and senior managers.

Crown application

The proposal not to apply Crown immunity was welcomed.

Exclusion of unincorporated bodies and individuals

The proposals were welcomed. It was noted that existing liabilities would continue to fall on individuals.

Application to police

One respondent suggested that Belfast Harbour Police be treated under the proposals in the same way as the Police Service of Northern Ireland.

Another called for the fullest consultation before any extension of the proposals to the police.

Impact of proposals

The following points were made.

Businesses that already take seriously their obligations under health and safety law should have nothing to fear.

The proposals could require organisations to control their own activities and regulate interfaces with third parties. This could add extra administration on companies already overburdened with paper-work.

Suitable training would be needed to inform personnel of their obligations.

Adequate and appropriate protocols would be needed between HSE, Police Ombudsman, PSNI and HM Coroner.

Conclusion

The responses will be used to inform the further development of policy and legislation to reform the law. Once that has been firmed up, the Government will respond to the points made during consultation. The Secretary of State has already indicated his intention that, subject to this consultation, Northern Ireland should join in the forthcoming Bill.

NORTHERN IRELAND OFFICE

November 2005

List of Respondents

Antrim Borough Council
Ards Borough Council
Belfast Harbour Commissioners
Bombardier Aerospace
Communication Workers Union
Construction Employers Federation
Democratic Unionist Party
Eastern Health & Social Services Board
Londonderry Port
NASUWT
Northstone NI Ltd
Police Federation for NI
Probation Board for NI
Quarry Products Association
Royal College of Midwives - NI
Superintendents' Association of NI
University of Ulster
Western Health & Social Services Board