

Making a killing

On 20 December 2005, the Home Affairs and Work and Pensions Committees of the House of Commons published a three-volume report on their analysis of the government's Draft Manslaughter Bill which first came into being in March 2005. A plethora of witnesses and various interest groups gave oral and written evidence. The select committee drew a number of conclusions which, in some instances, differed wildly from those of the government.

Independently, in November 2005, the expert group set up by the Scottish Executive reported on its views of culpable homicide. At first blush there appears to be a degree of symmetry between the select committee and the Scottish group.

Notably, the Scottish group states that uniformity with England is not a priority and "...what is important is to get the law right for Scotland".

However, the select committee states in relation to Scotland that cohesion is important and "...the government should be doing all it can to ensure there is [as] little practical variation as possible".

Proposed amendments

Space forbids a detailed analysis of the select committee's report. However, its amendments to the draft Bill, which is currently before the House of Lords, are outlined below.

Implementation delay

The Bill should be amended as suggested below and introduced before the end of the parliamentary session in 2006.

Gross management failure

The current proposals to have a test of gross breach by a senior manager should be replaced by a test of gross management failure. This could be partly measured against a benchmark of whether there has been any failure to comply with health and safety regulations, which should be an important factor for the jury in assessing whether there has been a general gross management failure.

Responsibility for subsidiaries

Parent companies should be culpable for the gross management failure of their subsidiaries. The select committee wants this further extended to employment agencies and principal contractors.

Jurisdiction extended

Jurisdiction should be extended so that deaths anywhere in the UK trigger the offence. Moreover, jurisdiction could even cover the

Gerard Forlin outlines select committee proposals for a new corporate manslaughter offence and compares them to those of the government

- select committee amendments, and the Scottish perspective
- gross management failure; jurisdiction extension



EU, and beyond that geographical scope, organisations having to provide information to the UK authorities about deaths caused elsewhere.

Extra-territorial jurisdiction

The Scottish panel thinks the offence should apply equally to deaths in Scotland caused by organisations based outside Scotland and to deaths caused outside Scotland by organisations based within Scotland.

It is unlikely, in the short term, that the government will be amenable to this suggestion. However, the select committee's wish list does mirror an expansion of extra-territorial criminal and civil jurisdiction, eg in personal injury and terrorism cases, and, within Europe, the advent of Euro warrants is likely to contribute to this trend.

Crown immunity

Crown immunity should be pruned back, leaving only central and high-level public policy issues, such as National Health Service procurement, protected from prosecution. This is bound to agitate the Civil Service and impact on general morale.

Secondary role

Contrary to the government's position, new legislation should be introduced so that anyone who has a secondary role in the gross management failure can be prosecuted and

sentenced for up to 14 years imprisonment. This proposal is bound to slow the Bill's passage and is unlikely to be implemented.

Sentencing procedures

A separate directors' statutory code of health and safety and a raft of sentencing procedures, including corporate death sentences and equity fines should be created, as well as proposals for directors to be held in contempt if the organisation fails to effect the court's imposed changes to a system. It is interesting that the Scottish Advisory Panel advocates that the offence of corporate manslaughter be extended to serious injury and occupational illness that causes death.

"Jurisdiction should be extended so that deaths anywhere in the UK trigger the offence"

Implementation date

It remains to be seen which, if any, of these proposals are incorporated into the law. Many may fall by the wayside in an effort to pass the Bill. The legislative timetable is uncertain but 2007 is a more realistic deadline.

Gerard Forlin is a barrister at 2-3 Gray's Inn Square. E-mail: gerard@gerardforlin.com. Webiste: www.gerardforlin.com