



AN BILLE UM DHÚNORGAIN CHORPARÁIDEACH, 2001
CORPORATE MANSLAUGHTER BILL, 2001

EXPLANATORY MEMORANDUM

Purpose of the Bill

The Bill is by its long title called an Act to define certain circumstances in which a body corporate, its officers and its employees may be found guilty of manslaughter. The Bill is proposed against a background of increasing public concern at the rate of fatalities arising from industrial accidents and of public frustration at the difficulties involved in holding corporate bodies liable in criminal law.

The essential difficulty arises from the way in which the law treats a corporate body, as opposed to an individual. In order to succeed in the prosecution of a serious crime, the authorities must prove not only that certain acts were committed but also the “state of mind” of the person responsible for those acts — for example, that the acts were committed intentionally, recklessly or with gross negligence. But how does one attribute a state of mind to a corporation?

The present answer to that question is that a company’s mind is the mind of its senior officers. In other words, in order to convict a company of a crime like manslaughter, one must identify an individual within the company who is personally guilty of gross negligence *and* who is sufficiently senior within the organisation that he or she can be said to personify the “directing mind” of the company. If fault does not lie at such a senior level, then the company’s mind cannot be held to be responsible and so the company escapes liability.

This “identification principle” imposes severe limitations. The result of the approach is that it is far easier to try and convict a small one-man company of a criminal offence than it is to convict a large multi-national corporation, where there are varying levels of responsibility and where serious lapses may be the responsibility of an individual who is very far from the company boardroom.

For example, the most infamous prosecution for corporate manslaughter was against P&O following the capsizing of the *Herald of Free Enterprise* in March, 1987. Despite overwhelming evidence of lax health and safety management, the prosecution could not identify an individual within the organisation who was personally guilty of gross negligence manslaughter and who was of sufficient seniority to represent the directing mind of P&O. Therefore, proof of the necessary state of mind — failure to exercise foresight — could not be attributed to the defendant company and it escaped conviction and punishment.

The purpose of this Bill is to create a new statutory offence, reflecting the characteristics of corporations, which would provide for their criminal liability for involuntary homicide on broader grounds than the identification principle alone would allow. The Bill is based on a March, 1996, report of the Law Commission of England and Wales, *Legislating the Criminal Code: Involuntary manslaughter*. (There is no material difference between the law of England and Irish law in this area. In fact, there is little or no specifically Irish jurisprudence in this area, simply because there have been few, if any, prosecutions in this country. This is in itself proof of the difficulty faced by the Irish authorities in mounting a successful prosecution.)

The chief recommendation of the Law Commission was that a company should be guilty of corporate manslaughter if:—

“a management failure by the corporation is the cause or one of the causes of a person’s death, and that failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances”.

The Commission proposed that “management failure” by a corporation would be established:—

“if the way in which its activities are managed or organised fails to ensure the health and safety of persons employed in or affected by those activities, and such a failure may be regarded as a cause of a person’s death”.

Apart from adopting the thrust of these recommendations, the Bill goes on to define the circumstances in which officers or employees of a company may be found to be personally guilty of manslaughter.

Provisions of Bill

Section 1(1) sets out the definition of corporate manslaughter. It provides that where, within the State—

- the undertaking, or any activities in connection with the undertaking, of a company is or are managed or organised in a way that fails to ensure that the health or safety of persons liable to be affected (including employees of the company) is not thereby threatened,
- that failure amounts to conduct falling far below the standard of care and attention it is reasonable in the circumstances to expect would be paid to ensuring that the health or safety of such persons is not so threatened, and
- that failure is the cause or one of the causes of the death of a person (notwithstanding that the immediate cause of the person’s death is the act or omission of another individual),

the company shall be guilty of manslaughter. (It is necessary to state, by way of clarification, a territorial limitation for the offence, because at common law the State has an extra-territorial jurisdiction in cases of homicide committed by individuals.)

In order to secure a conviction against a company under the subsection, it is only necessary to prove a “management failure” — an absence of a proper system of oversight and control. It is not necessary to prove personal liability on the part of any individual, let alone a senior management figure.

Subsection (2) goes on to deal with personal criminal liability. It provides that where an offence is committed by a company under *subsection (1)* and the management failure referred to in that subsection is proved to have been attributable to recklessness or gross negligence on the part of a person who is an officer or employee of the company, that person shall be guilty of manslaughter.

Subsection (3) then defines the concepts of recklessness and gross negligence in standard terms. A person acts recklessly when he or she *knowingly* takes a substantial and unjustifiable risk that his or her act or omission will threaten the health or safety of others; a person acts with gross negligence if he or she fails to exercise the *foresight and prudence* it is reasonable to expect of a person in his or her circumstances, with the result that his or her act or omission places others at serious risk of injury.

Subsection (4) makes it clear that these provisions are additional to, and not in substitution for, existing rules of criminal liability. It provides that the foregoing subsections do not preclude a company or an individual being found guilty of manslaughter in circumstances other than those referred to in those subsections.

Subsection (5) deals with matters that would be admissible in evidence as proof of the appropriate standard of care and attention, in order to establish whether a management failure falls far below the standard it is reasonable to expect. Regard may be had to:—

- the duties, if any, imposed on the company under the Safety, Health and Welfare at Work Act, 1989, the relevant statutory provisions (within the meaning of that Act) and the provisions of any other enactment imposing duties on the company in relation to the safety and health of its employees and of other persons liable to be affected by the manner in which its undertaking, or activities in connection with its undertaking, is or are managed or organised; and
- the provisions of any relevant code of practice, safety code, manual, guidelines or similar publication, whether made or published under statutory authority or otherwise, that would be admissible in evidence in a civil action for personal injuries or fatal injuries, as being relevant to the question of negligence or breach of duty, including breach of statutory duty.

Subsection (6) defines “company” so as to include any body corporate, whether a corporation aggregate or a corporation sole (such as a Minister of the Government), wherever incorporated and irrespective of the means by which it is incorporated.

Section 2 provides for the short title of the Bill.

An Teachta Pádraig Ó Coinín,
Aibreán, 2001