



DÁIL ÉIREANN

**AN BILLE UM CHEARTAS COIRIÚIL 2004
CRIMINAL JUSTICE BILL 2004**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL 2004 —ROGHCHOISTE

CRIMINAL JUSTICE BILL 2004 —SELECT COMMITTEE

*LeasuitheBreise
Additional Amendments*

SECTION 24

a247a. In page 25, before section 24, but in Part 4, to insert the following new section:

“PART 5

CORPORATE KILLING

Interpretation. 24.—In this part—

“court” means the Circuit Criminal Court;

“high managerial agent” means a person being a director, manager or other similar officer of the undertaking, or a person who purports to act in any such capacity, whether or not that person has a contract of employment with the undertaking;

“undertaking” means a person being a body corporate or an unincorporated body of persons engaged in the production, supply or distribution of goods or, the provision of a service whether carried on for profit or not.”.

—Jim O’Keeffe.

a247b. In page 25, before section 24, but in Part 4, to insert the following new section:

“Offence of
corporate
manslaughter.

25.—(1) Where an undertaking causes the death of a human person by gross negligence, that undertaking is guilty of an offence called “corporate manslaughter”.

(2) An undertaking causes death by gross negligence where—

(a) it owed a duty of care to the deceased human person,

(b) it breached that duty of care in that it failed to meet the standard of care in *subsection (3)*,

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(c) the breach of duty was of a very high degree and involved a significant risk of death or serious personal harm, and

(d) the breach of duty caused the death of the human person.

(3) The standard of care required of the undertaking is to take all reasonable measures to anticipate and prevent risks to human life, having due regard to the size and circumstances of the undertaking.

(4) In assessing whether the undertaking owed the deceased human person a duty of care the court shall have regard to any common law or statutory duties imposed on the undertaking, and in particular shall have regard to whether the undertaking owed a duty as—

(a) an employer,

(b) an occupier of land,

(c) a producer of goods, or

(d) a provider of services.

(5) In assessing whether the undertaking breached the standard of care in *subsection (3)* the court shall have regard to any or all of the following:

(a) the way in which the activities of the undertaking are managed or organised by its high managerial agents;

(b) the allocation of responsibility within the undertaking;

(c) the procedural decision-making rules of the undertaking;

(d) the policies of the undertaking;

(e) the training and supervision of employees by the undertaking;

(f) the response of the undertaking to previous incidents involving a risk of death or serious personal harm;

(g) the stated and actual goals of the undertaking;

(h) the adequacy of the communications systems within the undertaking including systems for communicating information to others affected by the activities of the undertaking;

(i) the regulatory environment in which the undertaking operates, including any statutory duties to which the undertaking is subject;

(j) any assurance systems to which the undertaking has subscribed;

(k) whether the undertaking was operating within the terms of a contract or licence made or granted under legislation.”.

—Jim O’Keeffe.

a247c. In page 25, before section 24, but in Part 4, to insert the following new section:

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“Offence of grossly negligent management causing death.

26.—(1) Where an undertaking has been convicted of corporate manslaughter and a high managerial agent of the convicted undertaking—

- (a) knew or ought reasonably to have known of a substantial risk of death or serious personal harm,
- (b) failed to make reasonable efforts to eliminate that risk,
- (c) that failure fell far below what could reasonably be expected in the circumstances, and
- (d) that failure contributed to the commission of the corporate offence, that agent shall be guilty of an offence called “grossly negligent management causing death”.

(2) For the purposes of assessing whether a high managerial agent ought to have known of a risk the court shall have due regard to the actual and stated responsibilities of the high managerial agent.

(3) For the purposes of assessing whether a high managerial agent failed to make reasonable efforts to eliminate a risk, the court shall have due regard to the actual responsibilities within the undertaking of the high managerial agent and whether it was within the power of the high managerial agent to eliminate the risk.

(4) If it was not within the power of the high managerial agent to eliminate a risk then he or she will have failed to take reasonable measures to eliminate the risk if he or she failed to pass on information of the risk to others within the undertaking who were in a position to eliminate the risk.

(5) The dissolution of an undertaking shall not prevent a prosecution of high managerial agents of that company for grossly negligent management causing death.”.

—Jim O’Keeffe.

a247d. In page 25, before section 24, but in Part 4, to insert the following new section:

“Prosecution of offences.

27.—Prosecutions for the offence of corporate manslaughter or the offence of grossly negligent management causing death shall be on indictment.”.

—Jim O’Keeffe.

a247e. In page 25, before section 24, but in Part 4, to insert the following new section:

“Penalties.

28.—(1) An undertaking convicted of corporate manslaughter is liable to a fine.

(2) A high managerial agent convicted of grossly negligent management causing death is liable to a fine or imprisonment for a term not exceeding 12 years, or to both.”.

—Jim O’Keeffe.

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a247f. In page 25, before section 24, but in Part 4, to insert the following new section:

“Pre-sanction reports.

29.—(1) Before sentencing an undertaking convicted of corporate manslaughter, the court may order a pre-sanction report on the convicted undertaking.

(2) A pre-sanction report shall include information on—

- (a) the means of the undertaking,
- (b) the previous compliance by the undertaking with any relevant legislative duties,
- (c) the previous cooperation by the undertaking with relevant bodies having legislative enforcement or regulatory functions, and
- (d) the possible effects on other parties of imposing a fine or other order under this Act.”

—Jim O’Keeffe.

a247g. In page 25, before section 24, but in Part 4, to insert the following new section:

“Remedial orders.

30.—(1) An undertaking convicted of corporate manslaughter may, in addition to or instead of any fine imposed, be ordered to remedy the matters which gave rise to the offence, in this section referred to as a remedial order.

(2) In assessing whether a remedial order is appropriate the court shall have due regard to all relevant circumstances, including—

- (a) whether a remedial order is necessary to secure the payment of a fine,
- (b) whether the undertaking has subscribed to any assurance programmes,
- (c) the previous compliance by the undertaking with any relevant legislative duties,
- (d) whether a remedial order is necessary to prevent a recurrence of the events which gave rise to the corporate manslaughter.

(3) When imposing a remedial order the court may consult with and hear submissions from any relevant regulatory and enforcement authorities in determining the conditions to be imposed.

(4) A remedial order may include the following:

- (a) a requirement that prior to imposition of the remedial order the undertaking submits to the court a detailed programme outlining the steps to be taken to remedy the problems that led to the corporate manslaughter;
- (b) in the event of the programme submitted being found unsatisfactory by the court, a programme drawn up by the court in consultation with any relevant regulatory and enforcement authorities;

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- (c) a requirement on the undertaking to communicate to employees, or where appropriate others, or both, the details of the programme;
- (d) a requirement on the undertaking to make regular reports on the implementation of the programme;
- (e) a requirement on the undertaking to submit to regular unannounced inspections to assess the implementation of the programme for reform, without prejudice to any statutory powers of the court or of any regulatory and enforcement authorities.

(5) Where an undertaking does not comply with the terms of a remedial order, the court may impose a fine or supervised management on the undertaking until such time as the order is implemented.

(6) Where supervised management is imposed it shall be conducted by a relevant regulatory or enforcement authority.

(7) Where there is no relevant regulatory or enforcement authority the court may appoint a competent officer to manage the undertaking who shall—

- (a) be suitably qualified,
- (b) not be connected to the convicted undertaking,
- (c) report to the court at specified regular intervals.

(8) The costs associated with the remedial order shall be borne by the convicted undertaking unless the court decides otherwise.”.

—Jim O’Keeffe.

a247h. In page 25, before section 24, but in Part 4, to insert the following new section:

“Community service orders.

31.—(1) A court may impose a community service order on an undertaking convicted of corporate manslaughter, instead of or in addition to a fine.

(2) Prior to imposing a community service order the court shall require the undertaking to prepare a report containing the details of a community service project it could perform.

(3) If the convicted undertaking does not propose such a project, or the court rejects its proposal, the court shall specify a project to be undertaken.

(4) A community service project shall bear a reasonable relationship to the circumstances giving rise to the commission of corporate manslaughter.

(5) In determining the nature of a community service order the court shall consider what damage, if any, was suffered by the community as a whole as a result of the corporate manslaughter.

(6) Where a community service order requires more supervision than could be performed by the court, the court may appoint a competent officer to manage the undertaking who shall—

- (a) be suitably qualified,

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- (b) not be connected to the convicted undertaking,
- (c) report to the court at specified regular intervals.

(7) The competent officer of the court shall supervise compliance with the project and, if necessary, prepare reports on the proposed project.

(8) The fees incurred by the competent officer of the court shall be payable by the undertaking unless the court decides otherwise.”.

—Jim O’Keeffe.

a247i. In page 25, before section 24, but in Part 4, to insert the following new section:

“Adverse publicity orders.

32.—(1) In addition to or instead of any fine that may be imposed, the court may order that an undertaking convicted of corporate manslaughter be made subject to an adverse publicity order.

(2) An adverse publicity order shall require the convicted undertaking to publicise the fact of its conviction for corporate manslaughter—

- (a) in a specified broadcast or print medium,
- (b) by signage or leaflets at the principal office or place of business of the undertaking,
- (c) by letters, emails or telephone to the customers of the undertaking or those affected by the conduct of the undertaking, or
- (d) by any other means, including electronic means, which the court considers appropriate.”.

—Jim O’Keeffe.

a247j. In page 25, before section 24, but in Part 4, to insert the following new section:

“Disqualification orders.

33.—(1) Where the court considers it appropriate, a high managerial agent convicted of grossly negligent management causing death may be disqualified from acting in a management capacity for a period not exceeding 15 years.

(2) A person found to be acting in breach of a disqualification order shall be guilty of an offence.

(3) A prosecution for an offence under this section shall be on indictment.

(4) A person convicted of an offence under this section is liable to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 2 years, or to both.

(5) In addition to the penalties provided for, a person convicted of an offence under this section—

- (a) shall be subject to a further period of disqualification of 10 years, and

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(b) shall be required to return to the undertaking any remuneration paid to him or her while acting in breach of a disqualification order.

(6) Any person found to be acting on the instructions of another known to that person to be subject to a disqualification order shall be liable to a disqualification order.”.

—Jim O’Keeffe.

a247k. In page 25, before section 24, but in Part 4, to insert the following new section:

“Effect on prosecution for manslaughter by gross negligence.

34.—(1) Nothing in this Act shall prevent the prosecution of any individual for the offence of manslaughter by gross negligence.

(2) Where a high managerial agent has been charged with manslaughter by gross negligence arising from an incident related to an undertaking and that prosecution fails, it shall be open to the court to convict of grossly negligent management causing death as an alternative verdict.”.

—Jim O’Keeffe.

a247l. In page 25, before section 24, but in Part 4, to insert the following new section:

“Disregarding separate legal personality.

35.—A court may at its discretion disregard separate legal personality where an undertaking has been dissolved and re-formed and the court is satisfied that the purpose of that dissolution and re-formation was to avoid criminal liability for corporate manslaughter or grossly negligent management causing death.”.

—Jim O’Keeffe.

SECTION 32

272a. In page 35, line 10, to delete “practicable” and substitute “practicable,”.

—Jim O’Keeffe.

SECTION 33

272b. In page 35, line 19, to delete “Reform” and substitute “Reform,”.

—Jim O’Keeffe.

SECTION 36

281a. In page 36, line 27, to delete “are” and substitute “is”.

—Jim O’Keeffe.