



An Bille um Dhúnorgain Chorparáideach (Uimh. 2), 2016
Corporate Manslaughter (No. 2) Bill 2016

Mar a tionscnaíodh

As initiated



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AN BILLE UM DHÚNORGAIN CHORPARÁIDEACH (UIMH. 2), 2016
CORPORATE MANSLAUGHTER (NO. 2) BILL 2016

Bill

entitled

An Act to create the indictable offence of corporate manslaughter by an undertaking, to create the indictable offence of grossly negligent management causing death by a high managerial agent of the undertaking, and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act— 10

“court” means 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 such a capacity, including those that play a role in the making of decisions about how the whole or part of the activities of the undertaking are to be managed or organised or the actual managing of those activities, including those who have been delegated managerial duties, whether or not that person has a contract of employment with that undertaking; 15

“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 including those which are Government departments and statutory bodies, whether carried on for profit or not, as well as faith based organisations and groups. 20

Offence of corporate manslaughter

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

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

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

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

(c) the breach of duty involved a significant risk of death or serious personal harm, and 30

- (d) that breach caused the death of the 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 person a duty of care the court shall have regard to the 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 or subcontracted 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 managerial agents;
 - (b) the allocation of responsibility or activities within the undertaking;
 - (c) the procedural rules of the undertaking;
 - (d) the policies of the undertaking;
 - (e) the training and supervision of employees of 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.

Offence of grossly negligent management causing death

- 3. (1) Where an undertaking has been convicted of corporate manslaughter and a high managerial agent of the convicted undertaking—
 - (a) knew or ought to reasonably have known of a substantial risk of death or serious personal harm,
 - (b) failed to take 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”.

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

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(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.

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

Prosecution of offences

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

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Penalties

5. (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.

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Pre-sanction reports

6. (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 and financial status of the undertaking,

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(b) the previous compliance by the undertaking with any relevant legislative duties,

(c) the previous co-operation by the undertaking with relevant bodies having legislative enforcement or regulatory functions, and

(d) the possible adverse effects on other parties of imposing a fine or other orders under this Act.

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Remedial orders

7. (1) An undertaking convicted of corporate manslaughter may, in addition to 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 the 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, and
 - (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 trade unions, and regulatory and enforcement authorities in determining the conditions to be imposed.
- (4) A remedial order may include—
- (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 trade unions, and regulatory and enforcement authorities,
 - (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, or
 - (e) a requirement on the undertaking to submit to regular unannounced inspections to assess that implementation of the programme for reform, without prejudice to any statutory powers of the court or of any other 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, and
 - (c) report to the court at regular specified intervals.

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

Community service orders

8. (1) A court may impose a community service order on an undertaking convicted of corporate manslaughter in addition to a fine. 5
- (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. 10
- (4) A community service project shall bear a reasonable relationship to the circumstances giving rise to the commission of the 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. 15
- (6) Where a community service order requires more supervision than could be performed by the court, the court shall appoint a competent officer to manage the undertaking who shall—
- (a) be suitably qualified,
 - (b) not be connected to the convicted undertaking, and 20
 - (c) report to the court at 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. 25

Adverse publicity orders

9. (1) In addition to any fine 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—
- (a) the fact of its conviction for corporate manslaughter, 30
 - (b) the specified particulars of the offence,
 - (c) the amount of any fine imposed,
 - (d) the terms of any remedial order made,
 - (e) the terms of any community service order made, and
 - (f) where the court considers appropriate, the terms of any disqualification order made. 35

- (3) An adverse publicity order shall require the convicted undertaking to publicise the requirements set out in *subsection (2)*—
- (a) in a specified broadcast, print or online medium,
 - (b) by signage or leaflets at an office or place of business of the undertaking that the court deem appropriate, 5
 - (c) by letters, emails, telephone or other means of communication to the customers of the undertaking or those affected by the conduct of the undertaking, or affected by Community service orders, and
 - (d) by any other means, including electronic means, which the court deems appropriate. 10
- (4) An adverse publicity order may require the organisation to supply to an enforcement authority or authorities (if any) as it considers appropriate within a specified period, evidence that the adverse publicity order has been complied with.
- (5) An undertaking that fails to comply with an adverse publicity order is guilty of an offence, and liable on conviction on indictment to a fine. 15

Disqualification orders

- 10.** (1) Where the court considers it appropriate, a managerial agent convicted of grossly negligent management causing death may be disqualified from acting in a management capacity in an area specified by the court for a period not exceeding 15 years. 20
- (2) A person found to be in breach of a disqualification order is 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 €5,000,000 or imprisonment for a term not exceeding 2 years or to both.
- (5) Where the court imposes a fine on a person convicted of an offence under this section, the court must take into account the person's financial circumstances, and for that purpose, the court may inquire into that person's financial circumstances in so far as is practicable. 25
- (6) In this section—
- “financial circumstances” means, in relation to a person who has been convicted of an offence— 30
- (a) the amount of the person's annual income,
 - (b) the aggregate value of all the property (real and personal) belonging to the person,
 - (c) the aggregate amount of all liabilities of the person including any duty (moral or legal) to provide financially for members of his or her family or other persons including employees, 35
 - (d) the aggregate of all monies owing to the person, the dates upon which they fall due to be paid and the likelihood of their being paid, and

- (e) such other circumstances as the court considers appropriate.
- (7) 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 a duration of 10 years, and 5
 - (b) shall be required to return to the undertaking any remuneration paid to him or her while acting in breach of a disqualification order.
- (8) Any person found to be acting on the instructions of another known to that person or found to be employing a person to be subject to a disqualification order shall be liable to a disqualification order. 10

Effect on prosecution for manslaughter by gross negligence

- 11. (1) Nothing in this Act shall prevent the prosecution of any individual for the offence of manslaughter by gross negligence.
- (2) Where a 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. 15

Disregarding separate legal personality

- 12. 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 reformation was to avoid criminal liability for corporate manslaughter or grossly negligent management causing death. 20

Short title

- 13. This Act may be cited as the Corporate Manslaughter Act 2016.

An Bille um Dhúnorgain Chorporáideach
(Uimh. 2), 2016

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chruthú an chiona indiotáilte arb éard é dúnorgain chorporáideach ag gnóthas, do chruthú an chiona indiotáilte arb éard é bainistiú mórfhaillíoch ag gníomhaire is ardbhainisteoir de chuid an ghnóthais, ar bainistiú mórfhaillíoch é is cúis le bás, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*Na Seanadóirí Marcus Ó Dálaigh, Robbie
Gallagher agus Lorraine Clifford-Lee a thug
isteach,*

13 Iúil, 2016

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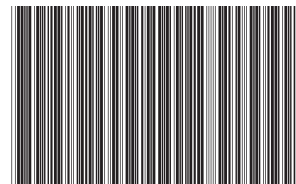
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Gallagher, Lorraine Clifford-Lee,*

13th July, 2016

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