

# INTRODUCTION: THE ACT, ITS HISTORY, AND THE COMMON LAW

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## A. THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 sweeps away the common law offence of manslaughter by gross negligence in its application to organizations which are subject to the Act. Those organizations include corporate bodies but also others, some of which had no potential liability at common law, such as Government departments and Crown bodies, from whom Crown immunity in this respect is removed, and partnerships. 1.01

In respect of these organizations that are subject to the Act, in place of the common law which will still apply to individuals, the offence of corporate manslaughter has been created. The test for liability in the Act is focused on the way that an organizations' activities were managed or organized, which must be the cause of a person's death and found the 'gross' breach of a relevant duty of care owed in negligence. 'Gross' breach is given the meaning of having fallen far below what could have reasonably been expected by the organization in the circumstances. 1.02

Furthermore, the way such activities were managed or organized must have been a substantial element in the breach. As Lord Bassam of Brighton told the House of Lords during the passage of the Bill through Grand Committee, this requirement for the involvement of senior management in the offence is there to limit liability, 'we put the requirement in the Bill that there was a failure at the senior level. 1.03

We think that this is important because we believe that without such clarity the offence could lead to risk aversion; we also think that it is right in principle that organisations cannot be guilty of corporate manslaughter without fault at the senior level.<sup>1</sup>

### B. THE COMMON LAW

1.04 If it was ever seriously contended that companies and other corporate bodies were not liable to be prosecuted for criminal offences, the myth has long since been dispelled.<sup>2</sup> However, corporate criminal liability has been plagued by the issue of how and through whom such a body becomes criminally liable.

1.05 Lord Hoffmann, in *Meridian Global Funds Management v Securities Commission* [1995] 2 AC 500, giving the judgment of the Privy Council, described the issue in the following way:

A rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person ‘himself’, as opposed to his servants or agents. This is generally true of the rules of the criminal law, which ordinarily impose liability only for the *actus reus* and *mens rea* of the defendant himself. How is such a rule to be applied to a company? One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, ie if the act giving rise to liability was specifically authorised by a resolution of the board or a unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act etc of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy.<sup>3</sup>

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<sup>1</sup> *Hansard*, HL, Grand Committee, column 134 (11 January 2007).

<sup>2</sup> See, eg, the comprehensive review of the authorities by Turner J, in *P & O European Ferries (Dover) Ltd* (1991) 93 Cr App R 72, 73 (Central Criminal Court), on the liability or otherwise of companies to be prosecuted. In *P & O*, Turner J outlined the incremental development of corporate criminal liability. The historical position was that an indictment could lie against a corporation: *per* Paterson J, in *Birmingham and Gloucester Railway Co.* (1842) 3 QB 223; *per* Denman CJ, in *Great North of England Railway Co.* (1846) 9 QB 315. Exceptions to this general rule were noted, such as that a corporation could not be indicted, *inter alia*, for treason or felony or perjury, or any offence involving personal violence.

<sup>3</sup> [1995] 2 AC 500, at 506C.

Lord Hoffman described:

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It is a question of construction in each case as to whether the particular rule requires that the knowledge that an act has been done, or the state of mind in which it was done, should be attributed to the company.<sup>4</sup>

One of the competing theories of attribution was the ‘identification’ doctrine,<sup>5</sup> which was developed by *Tesco Supermarkets Ltd v Nattrass* in which, at 170E, Lord Reid said:

1.07

A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company.

The alternative approach to corporate attribution can be found in *R v British Steel plc* [1995] IRLR 310, a case in which the defendant company was prosecuted for a breach of the duty under the Health and Safety at Work Act 1974, s 3(1), to do all that was reasonably practicable to ensure safety. A worker was killed because of the collapse of a steel platform during a repositioning operation which a competent supervisor would have recognized was inherently dangerous. The defence was that the workmen had disobeyed instructions and, even if the supervisor was at fault, the company at the level of its directing mind had taken all reasonably practicable steps. In the Court of Appeal, Steyn LJ described the issue at 313:

1.08

Counsel for British Steel plc concedes that it is not easy to fit the idea of corporate criminal liability only for acts of the ‘directing mind’ of the company into the language of s 3(1). We would go further. If it be accepted that Parliament considered it necessary for the protection of public health and safety to impose, subject to the defence of reasonable practicability, absolute criminal liability, it would drive a juggernaut through the legislative scheme if corporate employers could avoid criminal liability where the potentially harmful event is committed by someone who is not the directing mind of the company. . . that would emasculate the legislation.

In a commentary on this decision in [1995] Criminal Law Review 655 Professor Sir John Smith said in relation to the ‘directing mind’ argument

1.09

Where a statutory duty to do something is imposed upon a particular person (here an employer) and he does not do it, he commits the actus reus of an offence. It may be that he has failed to fulfil his duty because his employee or agent has failed to carry out his duties properly, but this is not a

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<sup>4</sup> [1995] 2 AC 500, at 511D.

<sup>5</sup> The origins of which are said to lie in the speech of Viscount Haldane LC in *Lennard's Carrying Co. Ltd v Asiatic Petroleum Co. Ltd* [1915] AC 705 at 713; and the judgment of Denning LJ in *Bolton Engineering v TJ Graham & Sons* [1957] 1 QB 159 at 172.

case for vicarious liability. If the employer is held liable, it is because he personally has failed to do what the law requires him to do and he is personally not vicariously liable. There is no need to find someone—in the case of a company, the brains and not merely the hands—for whose act the person with the duty be held liable. The duty on the company in this case was to ensure, ie to make certain, that persons are not exposed to risk. They did not make it certain. It does not matter how; they were in breach of their statutory duty and, in the absence of any requirement for mens rea, that is the end of the matter.

- 1.10 This was an approach adopted by Lord Hoffman in *R v Associated Octel Ltd* [1996] 4 All ER 846 [HL] where he described the view that ‘attribution’, in the context of statutory duties involved finding a person whom the company is responsible or as being:

‘based on what seems to me a confusion between two quite different concepts: an employer’s vicarious liability for the tortious act of another and a duty imposed upon the employer himself. Vicarious liability depends (with some exceptions) on the nature of the contractual relationship between the employer and the tortfeasor. There is liability if the tortfeasor was acting within the scope of his duties under a contract of employment. Otherwise, generally speaking, the employer is not vicariously liable. But s 3 is not concerned with vicarious liability. It imposes a duty upon the employer himself. That duty is defined by reference to a certain kind of activity, namely, the conduct by the employer of his undertaking. It is indifferent to the nature of the contractual relationships by which the employer chooses to conduct it.’

- 1.11 The apotheosis of the issue was reached with the Court of Appeal’s ruling in *Attorney General’s Reference (No 2 of 1999)* [2000] 2 Cr App Rep 207, affirming that of the trial judge Scott-Baker J (as he then was) in the manslaughter prosecution of a train company following the death of seven people in what was known as the Southall rail disaster. There, many of the above passages were considered, before it was definitively decided that unless an identified individual’s conduct, as opposed to the aggregated conduct of individuals, characterized as gross criminal negligence, could be attributed to a company, the company was not, liable for common law manslaughter. Civil negligence rules, it was held, were not apt to confer criminal liability on a company; rather, the ‘identification’ doctrine remained the only basis in common law for corporate liability for gross negligence manslaughter.
- 1.12 Gross negligence manslaughter at common law involves the gross breach of a duty of care owed to the deceased under the law of negligence. Thus the identification doctrine, in its application to gross negligence manslaughter and corporations, provided that only the gross breach of an individual ‘directing mind’, and not the aggregated lesser failings of more than one such ‘directing mind’, could attach to the corporation.<sup>6</sup>
- 1.13 The further limitation on potential liability this provided was that, at common law, while a corporation would owe primary duties of care in negligence directors and be vicariously liable for breaches of duties of care by its employees, those who manage a company do not owe a duty of care to any third party by reason of holding

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<sup>6</sup> *Attorney-General’s Reference (No 1 of 1995)* [1996] 2 Cr App R 320.

such an office,<sup>7</sup> nor do they owe a duty of care in relation to the company's compliance with laws, certainly not such a duty of care in respect of the company's non-delegable statutory health and safety duties as employer,<sup>8</sup> and will only owe any duty of care as a result of some particular assumption or appointment of responsibility.<sup>9</sup>

Thus while a company could only be grossly negligent through its directors, nonetheless proving the existence of a duty of care owed by such a director was very difficult. 1.14

For the purposes of establishing liability, the doctrine made it practically impossible to identify, in anything but a very small company, a 'directing mind' who owed and was in breach of a duty of care and thus under whose auspices the company's gross breach was committed. Between 1992 and 2005 some 34 manslaughter prosecutions were launched against corporations, of which six resulted in a conviction. Each of the six was just such a small company that operated and was managed wholly through an identified director. 1.15

### C. COMMON LAW GROSS NEGLIGENCE MANSLAUGHTER

The existing common law offence of gross negligence manslaughter, which will continue to apply to individuals, crystallized in the judgment of Lord Mackay in *R v Adomako* [1995] 1 AC 171. 1.16

*Adomako*<sup>10</sup> authoritatively established that the ordinary principles of the law of negligence apply to determine whether a defendant was in breach of a duty of care towards the victim. Where a defendant can be proved to be in breach of a duty of care towards a deceased victim, which was a substantial cause of the death of the victim, then, if having regard to the risk of death involved, the defendant's conduct can be proved to have been 'so bad' in all the circumstances as to amount to a criminal act or omission, he will be guilty of manslaughter by gross negligence. 1.17

How 'bad' the conduct is judged to be is ultimately a question for a jury: in *Adomako*<sup>11</sup> it was held that it is always eminently for a jury to decide whether, having regard to the risk of death involved, the defendant's conduct was so bad in all the circumstances as to amount to a criminal act or omission.<sup>12</sup> Such allegations of manslaughter can, and often are, based upon an alleged omission 1.18

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<sup>7</sup> *Performing Right Society Ltd v Caryl Theatrical Syndicate Ltd* [1924] 1 KB 1 at 14; *Williams and another v Natural Life Health Foods Ltd and another* [1997] 1 BCLC 131 (CA); *Williams and Another v Natural Life Health Foods Ltd* (HL) [1998] 2 All ER 577.

<sup>8</sup> *Huckerby v Elliot* [1970] 1 ALL ER 189, DC; *R v P and another* [2007] All ER (D) 173 (Jul).

<sup>9</sup> *R v Great Western Trains Company Ltd* (unreported) Central Criminal Court, 30 June 1999, per Scott-Baker J; *Williams and Another v Natural Life Health Foods Ltd* (HL) [1998] 2 All ER 577.

<sup>10</sup> [1995] 1 AC 171.

<sup>11</sup> *ibid.*

<sup>12</sup> Following *R v Bateman* (1925) 19 Cr App R 8 (CCA) and *Andrews v DPP* [1937] AC 576 (HL).

to act in circumstances where a defendant is alleged to have been under a duty to act.

### 1. Recent authorities

- 1.19 The uncertainties that remains in common law manslaughter are illustrated by recent authorities which have centred around resolving four key issues:
- (a) What are the 'ordinary principles of negligence'?
  - (b) What is the relevance of any statutory duty owed by a defendant to a duty of care?
  - (c) What is the relevant test for establishing whether a duty of care exists?
  - (d) Is the question whether a duty of care exists one of fact or law?
- 1.20 The Court of Appeal held in *Misra and Srivastava* that the common law offence was sufficiently certain and did not offend Article 7 of the ECHR. As Lord Justice Judge stated, 'The ingredients of the offence have been clearly defined, and the principles decided in the House of Lords in *Adomako*. They involve no uncertainty.'<sup>13</sup> However, the principles decided in *Adomako* were equally imprecise. It was held in *Adomako*<sup>14</sup> that 'the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died.'<sup>15</sup> Yet, apparently some principles are more ordinary than others.
- 1.21 In *Wacker*<sup>16</sup> the Court of Appeal was concerned with the infamous lorry driver who had been convicted of conspiracy to facilitate the entry in the UK of illegal immigrants and of 58 offences of manslaughter by gross negligence following the horrific discovery of the asphyxiated bodies of 58 illegal immigrants within a container on his trailer at Dover.
- 1.22 Following the close of the prosecution case at trial, the defence submitted that one of 'the ordinary principles of the law of negligence', known by the Latin maxim of *ex turpi causa non oritur actio*, was that the law of negligence did not recognize the relationship between those involved in a criminal enterprise as giving rise to a duty of care owed by one participant to another.
- 1.23 The trial judge ruled that that the concept was as much a part of the law of manslaughter as other principles of the law of negligence. However, he found a distinction in the roles and responsibilities of the drivers and the immigrants and ruled that there was a case to answer.
- 1.24 This approach found no favour with the Court of Appeal who held that *ex turpi causa* was not an ordinary principle of negligence in common law gross negligence

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<sup>13</sup> [2004] EWCA Crim 2375 at para 64.

<sup>14</sup> *R v Adomako* (1994) 99 Cr App R 362.

<sup>15</sup> P 369 and 187B.

<sup>16</sup> [2003] 1 Cr App R 22.

manslaughter; rather, that the civil courts had introduced the concept as a matter of public policy as the courts will not 'promote or countenance a nefarious object or bargain which it is bound to condemn.'<sup>17</sup> Kay LJ went on to state that when Lord Mackay referred to ordinary principles of negligence, 'He was doing no more than holding that in an "ordinary" case of negligence, the question whether there was a duty of care was to be judged by the same legal criteria as governed whether there was a duty of care in the law of negligence.'

Statutory duties under the Health and Safety at Work etc. Act 1974 (HSWA) 1.25 impose strict liability save for the qualification of 'reasonable practicability'. HSWA specifically excludes civil liability in respect of breaches of the general duties created in ss 2–6 of the Act. Common law duties of care in negligence require a different and lower standard than that imposed by these statutory duties.

In *Singh* [1999] Crim LR 582 CA, the appellant was found to have been under a 1.26 duty to ensure the safety of gas equipment and convicted of gross negligence manslaughter. The appellant submitted to the Court of Appeal that the trial judge had failed to make clear to the jury what the extent of that duty was. Was it the absolute duty required under the statutory health and safety provisions or a common law duty to take reasonable care? The Court accepted the importance of the distinction and the possibility of different verdicts on the same facts dependent on the standard imposed. However, the Court found that the judges' summing up had not been wrong and that there was no risk that the jury had been unclear as to which standard applied, namely reasonable care. What the Court of Appeal failed to address was what relevance, if any, the statutory duties owed by the defendant had on the issues the jury had to determine.

In negligence, the existence of a statutory duty is not determinative of the existence of a duty of care. Indeed, in a number of cases civil courts have determined that no duty of care arose in such circumstances.<sup>18</sup> A statutory duty does no more than place a potential defendant in a situation of proximity to a potential claimant and may inform the extent of any duty of care found to arise. Unfortunately, the clarity of this position does not sit comfortably with dicta from the Court of Appeal's decision in *Willoughby*,<sup>19</sup> which suggested that there may be cases where a duty arises because Parliament has imposed a statutory duty.<sup>20</sup> 1.27

In September 2004, Mr Justice Mackay, dismissing counts of manslaughter 1.28 against directors of a number of companies in the prosecution that followed the Hatfield train crash, reviewed the conflicting authorities on the issue of how and by whom the existence of a duty of care is determined in individual gross negligence manslaughter. He identified how the offence was founded upon the 'ordinary principles of negligence' and, as such, the question of the existence of a duty care must

<sup>17</sup> Bingham LJ in *Saunders v Edwards* [1987] 1 WLR 1116 at 1134.

<sup>18</sup> See, eg, the House of Lords in *Stovin v Wise* [1996] AC 923 and *X and others (minors) v Bedfordshire CC* [1995] 3 All ER 353.

<sup>19</sup> [2005] 1 Cr App R 29.

<sup>20</sup> Para 23.

be resolved in accordance with the tripartite test set out in the leading authority, namely *Caparo Industries plc v Dickman*,<sup>21</sup> which explicitly recognized how the ingredients of this test, 'are not susceptible of any such precise definition as would be necessary to give them utility as practical tests.'<sup>22</sup>

- 1.29 It was just months later on the 1 December 2004, the host of conflicting authorities in respect of whether the existence of a duty of care in a charge on individual gross negligence manslaughter was a question of law for the judge, a question of fact for the jury or involved both questions of law and fact was reviewed by the Court of Appeal in *Willoughby* [2005] 1 Cr App R 29. The judgment of Rose LJ purported to decide, once and for all, that, 'Whether a duty of care exists is a matter for the jury once the judge has decided that there is evidence capable of establishing a duty.'<sup>23</sup>

### 2. The position of the statutory offence versus the common law offence

- 1.30 The Act does achieve a means of either resolving these issues or avoiding them for the offence of corporate manslaughter:
- The judge will decide whether a relevant duty of care was owed by the organization, as a matter of law, and will decide all questions of fact necessary so to do.
  - To be a relevant duty of care it must be one owed under the law of negligence that falls within certain defined categories. The operation of various principles, such as *ex turpi causa*, are excluded.
  - Health and safety duties owed under statute are relevant where they relate to an organization's breach of the relevant duty of care and are a matter a jury must consider when deciding the issue of gross breach.
- 1.31 The stark differences that will exist between the statutory offence of corporate manslaughter and the common law gross negligence manslaughter may prove challenging if ever an individual is indicted with the common law offence alongside an organization indicted with the statutory offence.

## D. THE NEED FOR REFORM

- 1.32 The late 1980s and early 1990s saw a series of public disasters where many lives were lost. *The Herald of Free Enterprise* capsized in March 1987 killing 187; this was followed in November of that year with the death of 31 people in the King's Cross Fire. In July 1988 the *Piper Alpha* oil platform disaster claimed the lives of 167; later in that year 35 died as a result of the Clapham rail crash. The following year saw

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<sup>21</sup> [1990] 1 All ER 568.

<sup>22</sup> [1990] 1 All ER 568 at 574.

<sup>23</sup> [2005] 1 Cr App R 29 at para 24.



51 people die when the *Marchioness* pleasure boat sank in the Thames. More recently, 49 people were killed as a result of the rail disasters at Southall, near Paddington, Hatfield and Potters Bar.

Perhaps infamously, none of these disasters was followed by a successful prosecution for gross negligence manslaughter of a company involved in the conduct of the undertaking responsible for the tragedy. Public outrage seemed to grow as what appeared to be companies with inadequate safety systems in place at the fatal times avoided conviction for manslaughter, although in a number of instances very substantial fines were imposed in respect of health and safety offences. 1.33

In each prosecution that was brought, what proved insurmountable was the common law doctrine of identification. This required the prosecution to prove that the act or omission causing the death was the act or omission in breach of a duty of care owed by an individual who was the embodiment of the corporation. 1.34

Government, the unions and practitioners had each observed that the law needed reform. Industry, too, acknowledged that the common law offence provided no certainty in respect of liability. 1.35

In 2006, John Reid, the then Home Secretary, declared that, 'Companies and other organisations must be held properly to account for gross corporate negligence that has led to loss of life.'<sup>24</sup> He further defended the need to legislate for a new corporate offence, stating that 'it is not enough for those failings to be punished under health and safety law'.<sup>25</sup> 1.36

However, the Corporate Manslaughter and Corporate Homicide Act 2007 comes with a disclaimer. The reasons why proceedings such as those that followed in the wake of public disasters proved unsuccessful 'are complex'.<sup>26</sup> The implementation of the 2007 Act will 'not mean that each of these cases would now necessarily be successfully prosecuted'.<sup>27</sup> Instead, the new Act is aimed at 'tackling the key difficulties'<sup>28</sup> the old law presented. It remains to be seen whether the next public disaster that involves large scale loss of life will result in a prosecution under the new Act. That the way in which an organization's activities are managed or organized by its senior management must have been a 'substantial element' in any gross breach of a duty of care for liability to arise may mean that a conviction for corporate manslaughter will prove almost as elusive as it did under the common law. 1.37

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<sup>24</sup> *Hansard*, House of Commons, 10 October 2006, col 194.

<sup>25</sup> *ibid.*

<sup>26</sup> Corporate Manslaughter: The Government's Draft Bill for Reform (Cm 6497), Introduction, at para 10.

<sup>27</sup> *ibid.*

<sup>28</sup> *ibid.*

## E. HISTORY OF THE ACT

- 1.38 The real foundations of the Act go back to the 1996 Law Commission report *Legislating the Criminal Code: Involuntary Manslaughter* (Law Com No 237).<sup>29</sup>
- 1.39 The Commission recommended that for the purposes of a proposed offence of corporate killing, a death should be regarded as having been caused by the conduct of a corporation if it was caused by a failure in the way which the corporation's activities are managed or organized, to ensure the health and safety of persons employed in or affected by those activities;<sup>30</sup> and, that the offence should be committed only where the defendant's conduct in causing death fell far below what could reasonably be expected.<sup>31</sup>
- 1.40 The Commission took the view that the existing common law reliance upon the existence of a duty of care was problematic:
- . . . the terminology of 'negligence' and 'duty of care' is best avoided within the criminal law because of the uncertainty and confusion that surround it.<sup>32</sup>
- 1.41 Following the 1997 Labour manifesto commitment to reform the law of corporate manslaughter and to remove Crown immunity, the government published its proposals in May 2000.<sup>33</sup> These were largely based upon the 1996 Law Commission's recommendations, however, the proposals set out a number of issues and posed various questions upon which the government thereafter started a protracted period of consultation. These issues surrounded whether and to what extent liability should be extended to organizations beyond corporations and the limiting of Crown immunity.
- 1.42 It was not until 23 March 2005 that the Home Office published a draft Corporate Manslaughter Bill.<sup>34</sup> The Bill proposed that the offence of corporate manslaughter would be committed by an organization if the way in which its activities were managed or organised by its senior management caused a death and amounted to a gross breach of a duty of care owed in negligence. A list of Government departments and Crown bodies which were to be organizations subject to the Act was included as a proposed schedule 1 to the Act; whether an organization owed a duty of care was proposed to be a matter for the judge to decide.
- 1.43 Having heard oral and written evidence from a wide panel of witnesses and various interest groups, on 20 December 2005, the Joint Committees of the Home Affairs and Work and Pensions Committees of the House of Commons

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<sup>29</sup> The report is available at <<http://www.lawcom.gov.uk/files/Lc237.pdf>>.

<sup>30</sup> Recommendation 11(4).

<sup>31</sup> Recommendation 11(2).

<sup>32</sup> *Legislating the Criminal Code: Involuntary Manslaughter* (Law Com No 237, 1996).

<sup>33</sup> *Reforming the Law on Involuntary Manslaughter: the Government Proposals* (May 2000).

<sup>34</sup> *Corporate Manslaughter: The Government's Draft Bill for Reform* (Cm 6497).

published a three-volume report<sup>35</sup> scrutinizing the government's draft Corporate Manslaughter Bill. The Joint Committees report contained many recommendations and called for a further review by the government. Principally, the Joint Committees recommended:

- the abandonment of 'relevant duty of care' and a return to the Law Commission's proposals;
- a rethink of the 'senior management' requirement;
- the inclusion of secondary individual liability.

The government published its response to the Joint Committees Report on 8 March 2006<sup>36</sup> and thereafter a draft Bill<sup>37</sup> was introduced to the House of Commons on 20 July 2006. The Government's amended Bill was proposed to extend across all the jurisdictions of the United Kingdom; a relevant duty of care in negligence remained at the heart of the offence, with the categories of potential duty broadened; individual liability under the Act was precluded; and, most importantly, the way that the organization's activities were managed or organized by senior management now had only to be a 'substantial element' in the breach. 1.44

The government set the tone for the progress of the Bill, by stating that it was 'firmly committed to taking the process of reform through to completion'. It indicated that time was of the essence for the new corporate offence: '...we will be looking to introduce a bill without delay as soon as parliamentary time allows'.<sup>38</sup> 1.45

The Bill received broad cross-party support and passed through the House of Commons, reaching the House of Lords on 5 December 2006. 1.46

Thereafter, the Bill ultimately spent nearly five months being passed to and from between the Commons and the Lords as the scope of the final Act was fought upon in a protracted 'ping-pong' stage. The amendments tabled by the Lords included both the semantic and those which would significantly alter the Act's operation. Many significant amendments entered the Act without contention, such as the inclusion of employing partnerships, trade unions and employers' associations to the category of organizations subject to the offence. The sticking point became the Lords insistence of the immediate inclusion in the Act of the duty owed to those persons in custody and the Commons rejection of the same. 1.47

The stand-off lasted throughout the spring of 2007 with neither House making any significant movement over the issue. The Lords dug their heels in and the final 1.48

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<sup>35</sup> First Joint Report from the Home Affairs and Work and Pensions Committees Session 2005–06 (HC-540).

<sup>36</sup> Government Response to the First Joint Report from the Home Affairs and Work and Pensions Committees Session 2005–06. (Cm 6755).

<sup>37</sup> Corporate Manslaughter and Homicide Bill (Bill 220).

<sup>38</sup> Government Response to the First Joint Report from the Home Affairs and Work and Pensions Committees Session 2005–06. (Cm 6755), p 1.

Act that received Royal Assent on 26 July 2007 provided for a duty of care to be owed to those detained in custody. 'Custody' is given a wide enough interpretation to include the Lords' original proposals. However, the provision, which is contained in s 2(1)(d), can only be brought into force by an Order approved by a vote of both Houses of Parliament.

- 1.49 In October 2007, the Ministry of Justice published *A Guide to the Corporate Manslaughter and Corporate Homicide Act 2007*,<sup>39</sup> being non-statutory guidance. That document promised that the majority of the provisions of the Act would be brought into force on 6 April 2008.

<http://www.pbookshop.com>

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<sup>39</sup> See App 2.