

SOCIAL ACTION, RESPONSIBILITY AND HEROISM BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Social Action, Responsibility and Heroism Bill as introduced in the House of Commons on 12 June 2014. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill contains 5 clauses.

4. The Bill makes provision about civil liability for negligence and for certain breaches of a statutory duty. It is general in its application so could apply to claims against individuals or organisations (including employers). At present a court considering a claim in negligence must determine whether the defendant acted reasonably, taking into account all the circumstances of the case. A court will also take into account all the relevant circumstances in determining whether a defendant was in breach of a duty of care imposed by statute. A substantial body of case law has established the kinds of factors which might be relevant to such determinations. In addition section 1 of the Compensation Act 2006 confirms that, in considering what was necessary to meet the standard of care in a particular case, the court can look at whether a particular requirement might prevent a desirable activity being carried out to any extent or discourage people from undertaking functions in relation to it.

5. The provisions of the Bill do not change this overarching framework but require a court which is determining what was required to meet the standard of care in a specific case to have regard to the matters mentioned in clauses 2 to 4 of the Bill. The Bill does not preclude the court from having regard to any other relevant factors or from deciding what weight to give to each of those matters in determining whether the standard of care has been met.

6. There is some evidence that people are deterred from participating in socially useful activities due to the worries about risk and/or liability. For example, “Helping out: a national survey of volunteering and charitable giving” in 2006/2007¹ found this was one of the main reasons² cited by respondents to the survey who did not currently volunteer. The Bill forms part of the Coalition Government’s wider programme to encourage participation in civil society and the Coalition Agreement contained a specific commitment to “take a range of measures to encourage volunteering and involvement in social action”.³

TERRITORIAL EXTENT AND APPLICATION

7. The Bill’s provisions extend to England and Wales only.

8. The provisions in the Bill relate to non-devolved matters in Wales and do not affect the powers and responsibilities of Welsh Ministers.

COMMENTARY ON CLAUSES

Clause 1 – When this Act applies

9. Clause 1 establishes the application of clauses 2 to 4; it provides that they apply when a court considering a claim in negligence or breach of statutory duty is determining what was necessary to meet the applicable standard of care.

Clause 2 to 4 – Social Action, Responsibility and Heroism

10. Clauses 2 to 4 provide that the court, making such a determination must have regard to the following matters;

¹ Helping Out: A National Survey of Volunteering and Charitable Giving, September 2007 - <http://www.ivr.org.uk/component/ivr/helping-out-a-national-survey-of-volunteering-and-charitable-giving>.

² Overall, 47% of just under 300 respondents felt the worry about risk/liability was a reason for not volunteering.

³ “The Coalition: our programme for Government” (May 2010):

<https://www.gov.uk/government/publications/the-coalition-documentation>.

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- whether the alleged negligence or breach of statutory duty occurred when the person was acting for the benefit of society or any of its members (clause 2);
- whether the person, in carrying out the activity giving rise to the claim, demonstrated a generally responsible approach towards protecting the safety or other interests of others (clause 3);
- whether the alleged negligence or breach of statutory duty occurred when the person was acting heroically by intervening in an emergency to assist an individual in danger and without regard to his or her own safety or other interests (clause 4).

COMMENCEMENT

11. The Bill, apart from clause 5, will come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument.
12. Clause 5 is to come into force on the day the Act is passed.

FINANCIAL EFFECTS

13. The financial implications of the Bill are set out in the Impact Assessment. The effect on public expenditure and public service manpower is expected to be minimal.

SUMMARY OF IMPACT ASSESSMENT

14. The Bill is accompanied by an impact assessment which is available on the Bill website at <https://government/collections/social-action-responsibility-and-heroism-bill>.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

15. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for Justice, the Rt. Hon. Chris Grayling MP, has made the following statement:

"In my view the provisions of the Social Action, Responsibility and Heroism Bill are compatible with the Convention rights."

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16. The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: the memorandum is available on the Bill website at <https://government/collections/social-action-responsibility-and-heroism-bill>.

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