

These notes refer to the Lords Amendments to the Corporate Manslaughter and Corporate Homicide Bill, as brought from the House of Lords on 28th February 2007 [Bill 70]

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Corporate Manslaughter and Corporate Homicide Bill, as printed for the Commons on 28th February 2007. They have been prepared by the Home Office in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 19, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for amendments 2, 3, 5, 6 and 10, which were opposed by the Government. (In the following Commentary, an asterisk appears in the heading to each of the paragraphs dealing with non-Government amendments.)

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COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1

5. Lords Amendment 1 extends the list of organisations covered by the offence that the Bill creates. The amendment brings within the scope of the offence partnerships, trade unions and employers' associations, but only (in each case) ones that are employers. These organisations are defined in a new interpretation clause (see Lords Amendment 33). The definition of partnership extends to partnerships covered by the Partnership Act 1890 and limited partnerships registered under the Limited Partnerships Act 1907 but not to limited liability partnerships created under the Limited Liability Partnerships Act 2000, which are bodies corporate and therefore organisations to which the offence already applies. The list of organisations to which the offence applies can be extended by secondary legislation, subject to the affirmative resolution procedure, to cover other unincorporated organisations (see Lords Amendment 32).

**** Lords Amendment 2***

6. Lords Amendment 2 adds to the list of relevant duties of care in clause 2(1) a duty owed to anyone held in custody. This would mean that in addition to any duties in paragraphs (a), (b) and (c), other duties owed to a person in custody were capable of engaging the offence. This would include duties relating to custodial functions. It would also include any other duty owed by an organisation to a person in custody, whether the duty related to custodial functions or not. Exemptions relating to the exercise of exclusively public functions (clause 3(2)), the carrying out of statutory inspections (clause 3(3)) and the carrying on of policing or law enforcement functions (clause 5(3)) would not apply: see Lords Amendments 5, 6 and 10.

**** Lords Amendment 3***

7. Lords Amendment 3 defines the term "custody", introduced in Lords Amendment 2.

Lords Amendments 4, 7 to 9, 11, 14, 16 to 18, 24 and 27

8. Lords Amendments 4, 7 to 9, 11, 14, 16 to 18, 24 and 27 remove definitions from various different clauses in the Bill. The definitions removed by these amendments now appear together in a single clause, as a result of Lords Amendment 33.

**** Lords Amendments 5, 6 and 10***

9. These are explained in paragraph 6.

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Lords Amendments 12 and 13

10. Lords Amendments 12 and 13 enable the exemption in clause 6 (which deals with responding to emergency circumstances) to apply to ambulance and other relevant medical transport services commissioned by the Department of Health or the Welsh Ministers, as well as by NHS bodies.

Lords Amendment 15

11. Lords Amendment 15 makes drafting changes to the definition of “relevant NHS body” in clause 6 and adds Strategic Health Authorities to the definition.

Lords Amendments 19 to 21 and 23

12. These amendments make drafting changes in clause 9 (power to order breach etc to be remedied).

Lords Amendment 22

13. The effect of Lords Amendment 22 is that a court may require an organisation on which it has imposed a remedial order to supply evidence of compliance with that order to any enforcement authority that was consulted prior to the order being imposed.

Lords Amendment 25

14. Lords Amendment 25 inserts a new clause under which a court may order a convicted organisation to publicise, in a manner specified by the court, the fact of its conviction, specified particulars of the offence, the amount of any fine imposed, and the terms of any remedial order that has been made.

15. Non-compliance with an order is an offence triable only on indictment and punishable with an unlimited fine.

Lords Amendment 26

16. Lords Amendment 26 makes a technical correction to the drafting of clause 12(7)(a) to ensure that the reference it contains to the effect of clause 12(3) is accurate.

Lords Amendment 28

17. Lords Amendment 28 results from Lords Amendment 1 and the application of the offence to partnerships. Partnerships (other than limited liability partnerships, which are corporate bodies and therefore already covered by the Bill) are not corporations and so lack a distinct legal personality for the purpose of owing a duty of care in the law of negligence. Lords Amendment 28 deals with this by providing for a partnership to be treated as though it owed the same duties of care as a corporate body for the purpose of this offence. Similarly, proceedings for the new offence are to be brought in the name of the partnership and any fine imposed is to be paid out of the funds of the partnership.

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18. These provisions are not required for partnerships that have a legal personality, as they do under (for example) Scots law. Nor are they required for trade unions or employers' associations in light of their quasi-corporate status.

Lords Amendment 29

19. Lords Amendment 29 ensures that provisions relating to criminal and court procedure and sentencing apply to partnerships, trade unions and unincorporated employers' associations in the same way as they apply to corporate bodies.

Lords Amendment 30

20. Lords Amendment 30 clarifies that a conviction for corporate manslaughter would not preclude an organisation being convicted for a health and safety offence on the same facts if this were in the interests of justice. It would therefore be possible to convict an individual on a secondary basis for such an offence under provisions such as section 37 of the Health and Safety at Work etc. Act 1974.

Lords Amendment 31

21. The effect of Lords Amendment 31 is that the current law of gross negligence manslaughter is abolished not only in its application to corporations but also in any application to those unincorporated bodies brought within the scope of the new offence by Lords Amendment 1.

Lords Amendment 32

22. This is explained in paragraph 5.

Lords Amendment 33

23. This inserts a new clause bringing together definitions previously appearing in various different clauses (see paragraph 8). The new clause also contains definitions of "employee", "employers' association", "partnership" and "trade union" (see paragraph 5).

Lords Amendment 34

24. The principal effect of Lords Amendment 34, read with clause 19(4)(a), is to make it clear that different provisions of the Bill can be brought into force at different times.

Lords Amendment 35

25. Lords Amendment 35 adds the National School of Government to Schedule 1, which lists the unincorporated government departments and similar bodies to which the offence will apply. The National School of Government became a non-ministerial government department in January 2007.

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FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

26. Lords Amendment 1 extends the offence to certain types of unincorporated body, as would an order under the new clause inserted by Lords Amendment 32 (see paragraph 5). Such extension is likely to involve some increase in the costs identified in the explanatory notes to the Bill. In particular there may be an increase in the number of organisations seeking legal advice and undertaking training in preparation for the Bill, involving some increase in costs to industry.

27. Lords Amendment 2 and the associated amendments, which would bring duties owed to those in custody within the scope of the offence (see paragraphs 6, 7 and 9), would by making the offence applicable in a wider range of circumstances be likely to involve some increase in the costs to the public sector already identified.