

# CORPORATE KILLING

## HOME OFFICE PROPOSALS

The Home Office launched proposals to make the law on involuntary manslaughter clearer and more effective in May 2000. The proposals aim to make it easier for companies and organisations to be prosecuted.

A consultation paper proposed the following new offences and penalties to replace the current law on involuntary manslaughter:

### ◆ Corporate killing

A specific offence intended to make companies accountable in criminal law where they fall far below what can be expected in the circumstances. *The suggested penalty is an unlimited fine and a remedial order to correct the original cause of the accident. Directors might also be liable to disqualification.*

### ◆ Reckless killing

For example, where the person is aware of the risk that their conduct will cause death or serious injury and it is unreasonable to take that risk. *The suggested penalty is a maximum of life imprisonment.*

### ◆ Killing by gross carelessness

For example, where there is a risk that the conduct would cause death or a serious injury which would have been apparent to a reasonable person; the person concerned is capable of appreciating the risk and either their conduct falls far below what could be expected or they intend their action to cause some injury or they unreasonably take the risk that it might. *The suggested penalty is a maximum of 10 years imprisonment.*

◆ Killing when the intention was to cause only minor injury but death was caused by an unforeseeable event. *The suggested penalty is a maximum of between five and 10 years imprisonment.*

## ADVANTAGES

The proposals would have the advantage of changing people's perception of the serious nature of the offence committed by employers who kill their own employees.

At the moment the public perception is that breaches of health and safety law, although criminal offences, are not 'real' crimes like theft or physical assault.

Calling the crime 'killing' would mean it was taken more seriously. Another advantage would be that punishment would be extended to areas not previously covered by the 1974 Health and Safety at Work Act.

## DISADVANTAGES

Prospect believes there are several potential disadvantages in the proposals:

### ◆ Resources

Estimates of HSE inspector time involved in a manslaughter investigation under the existing provisions are around two to three months for a straightforward case.

Of the 350 or so work-related deaths each year, a significant number require preliminary investigation for manslaughter before it can be determined whether or not there is a case for prosecution.

Under the proposed legislation, considerable resources would need to

be found to investigate corporate killing because the quantity of evidence would need to be bigger.

For the police it is likely that an investigation would involve a large team of officers and forensic staff for several weeks.

#### ◆ Investigation approach

There are significant differences between HSE and the police approach to investigating workplace deaths. HSE's underlying objective in its enforcement procedures is to improve health and safety in the workplace and prevent further mishap. The police approach is more focused on arrest and conviction.

#### ◆ Perception of crimes

There is a danger that offences under the HSWA investigated by HSE would be perceived as less serious than those investigated by the police.

In order to combat the view that occupational injury, ill-health or death are inevitable or acceptable there must be a cultural change in getting workplace health and safety seen as a proper crime.

#### ◆ Defining director responsibility

A key drawback in the Home Office proposals is that they would not necessarily ensure real accountability at director level in a company. It is all too easy for directors to remove themselves sufficiently far from the actual shop floor death to avoid responsibility.

## **PROSPECT PROPOSALS**

HSE should take a more proactive role in possible manslaughter cases both now and when the legislation changes.

HSE has the expertise in health and safety law and should be given the

resources to use it. The police are already over-stretched and it would be illogical to widen the scope of their work into areas where they do not have the knowledge or experience required.

HSE needs to be seen to be doing a good job on investigating fatalities. Prospect welcomes the current discussions on developing more successful HSE prosecutions through an enhanced in-house litigation service. It is envisaged that such a service would be able to provide expert legal advice to inspectors and would lead to more prosecutions.

All inspectors should receive special training on investigating fatalities. This should include an understanding of what the law on manslaughter involves, liaison arrangements with the police and how to deal sensitively with relatives.

Inspectors should automatically consider the possibility of a manslaughter charge and should not stop the investigation of a fatality when there is sufficient evidence for a HSWA case. The resources should be made available to continue further.

Inspectors who decide not to press charges for manslaughter in fatality investigations should justify their decision.

HSE should be proactive over this new legislation and ensure that protocols exist to counter the problems inherent in the proposals.

Prospect recognises that HSE's workload will increase and that political pressure will be necessary to provide the resources for this enlarged workload.

We think this is what working people and the public would want. Prospect calls on the government to put resources into HSE – the organisation that has the professional skills and expertise to prevent further deaths at work.