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## Prosecution Of Corporations For Manslaughter: Towards A New Offense Of "Corporate Killing" In The United Kingdom

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**PROSECUTION OF CORPORATIONS FOR  
MANSLAUGHTER: TOWARDS A NEW  
OFFENSE OF "CORPORATE KILLING"  
IN THE UNITED KINGDOM**

**MARK FRANKLIN, LL.B, MRAeS\***

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## I. INTRODUCTION

Moves are afoot in the United Kingdom to alter the way in which the law approaches criminal responsibility of corporations whenever someone is killed as a result of corporate activity. Following recommendations put forward by the Law Commission,<sup>1</sup> the United Kingdom government is working on implementing legislation creating the new offense of "Corporate Killing."<sup>2</sup> The purpose of the legislation will be to make it much easier for corporations *and their directors* doing business in the United Kingdom – regardless of country of incorporation – to be prosecuted and punished for manslaughter when the death of employees or third parties result from corporate activity.

The rationale behind the proposal stems, in part, from a number of major disasters in and around the United Kingdom, which have occurred in recent years in circumstances where official inquiries into their causes have resulted in severe criticism of the corporations involved.<sup>3</sup> However, with one insignificant exception, none of the corporations concerned or their directors have been

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1 The Law Commission was established by section 1 of the Law Commission Act, 1965, as a body charged by statute, with the function of reviewing the laws of the United Kingdom and recommending potential improvements.

2 *See generally* Legislating the Criminal Code: Involuntary Manslaughter, Law Commission Report No. 237, Pt. VIII: A New Offence of Corporate Killing (1996) (hereinafter Law Com. No. 237).

3 Liam Halligan & Robert Rice, *New Offense of "Corporate Killing" Considered Company Responsibility – Disasters Prompt Proposals to Convict Directors If Negligence Causes a Death*, FINANCIAL TIMES (London), Oct. 3, 1997, at 8 (listing, as well as the 1987 P & O European Ferries disaster where 187 people were killed, the 1987 King's Cross fire in which 31 died, the 1988 Piper Alpha Oil Platform disaster in which 167 died and the 1988 Clapham rail crash in which 35 died). *See also* *MV Herald of Free Enterprise*: Report of the Court, No. 8074, Department of Transp. (1987) (hereinafter the Sheen Report) (revealing that P & O Ferry Lines was operated "from top to bottom in a sloppy manner")

prosecuted and convicted of manslaughter.<sup>4</sup> This has happened because the current law in the United Kingdom relating to corporate manslaughter is problematic and does not have a great impact on the activities of large corporations.

The shortcomings of the current law have been exposed by the recent disasters in such a way that there is now an increasing perception in the United Kingdom that deaths resulting from gross negligence, in the exercise of business activities, are a category of unlawful conduct which has been neglected by the legal system for too long. This in turn has led to consideration of the issue of corporate manslaughter by the Law Commission. In 1996, it proposed reform of the law by recommending the creation of a Corporate Killing offense.<sup>5</sup> In the autumn of 1997, the United Kingdom government announced its intention to proceed with the proposed legislation and it is likely that a new law will be in effect within the next two years.<sup>6</sup>

## II. BACKGROUND OF THE NEW OFFENSE

The introduction of the new offense of Corporate Killing is considered necessary by the Law Commission because of the serious shortcomings of the existing corporate manslaughter rules in England.

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4 R. v. Kite, 2 Crim. App. 295 (Central Crim. Ct. 1996) (Eng.) (addressing the "Lyme Regis Canoe Tragedy" where four children died in a canoeing incident and the Managing Director and person solely responsible for safety at his canoe club, was held responsible and sentenced to three years in prison for failing to adhere to suggested safety guidelines).

5 Law Com. No. 237, *supra* note 2, at Pt. IX: Summary of Our Recommendations, para. 11.

6 Halligan & Rice *supra* note 3. It is likely that the Home Office Inter-Departmental Working Group that has been considering the Law Commission's report and possible amendments thereto will report to Ministers before the end of August 1999, following which there will be a public consultation process.

These shortcomings were well illustrated by the abortive attempt to prosecute P & O European Ferries (Dover) Limited (hereinafter P & O) and several members of the board of directors in relation to the 187 deaths that resulted from the 1987 Zeebrugge ferry disaster, involving a "roll-on roll-off" car, passenger and freight ferry.<sup>7</sup> The facts surrounding this tragedy were stated in the Law Commission Report as follows:

The ferry set sail from Zeebrugge [Belgium] inner harbour and capsized four minutes after crossing the outer mole . . . . The immediate cause of the capsizing was that the ferry had set sail with her inner and outer bow doors open. The responsibility for shutting the doors lay with the assistant bosun, who had fallen asleep in his cabin, thereby missing the "Harbour Stations" call and failing to shut the doors. The Chief Officer was under a duty as loading officer of the G deck to ensure that the bow doors were closed, but he interpreted this as a duty to ensure that the assistant bosun was at the controls. Subsequently, the report of the inquiry by Mr. Justice Sheen into the disaster (the "Sheen Report") said of the Chief Officer's failure to ensure that the doors were closed that, of all the many faults which combined to lead directly or indirectly to this tragic disaster, his was the most immediate.<sup>8</sup>

The Master of the ferry on the day in question was responsible for the safety of the ship and those on board. The inquiry therefore found that in setting out to sea with the doors open he was responsible for the loss of the ship. The Master, however, had

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7 R. v. P & O Eur. Ferries (Dover), Ltd., 93 Crim. App. 72 (Central Crim. Ct. 1990) (Eng.).

8 Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing (*citing* the Sheen Report, at para. 10.9).

followed the system approved by the Senior Master, and no reference was made in the company's "Ship's Standing Orders" to the closing of the doors.

The Senior Master's functions included the function of acting as co-ordinator between all the Masters who commanded the *Herald* and their officers, in order to achieve uniformity in the practices adopted on board by the different crews.<sup>9</sup>

The Sheen Report concluded that the P & O Ferry disaster was not the first occasion in which P & O's ships set sail with their bow doors open.<sup>10</sup> In addition, it found that P & O's management had not acted upon prior reports of similar incidents where bow doors remained open while at sea.<sup>11</sup> With regard to corporate responsibility for the accident, the Sheen Report stated:

Full investigation into the circumstances of the disaster leads inexorably to the conclusion that the underlying or cardinal faults lay higher up in the Company (than the Master, the Chief Officer, the assistant bosun, and the Senior Master). The Board of Directors did not appreciate their responsibility for the safe management of their ships. They did not apply their minds to the question: What orders should be given for the safety of our ships? The directors did not have any proper comprehension of what their duties were. There appears to have been a lack of thought about the way in which the *Herald* ought to have been organised for the Dover - Zeebrugge run. All concerned in management, from members of the Board of Directors down to the junior

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9 Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing, paras. 8.45-8.47.

10 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.46.

11 *Id.*

superintendents, were guilty of fault in that all must be regarded as sharing responsibility for the failure of management. From top to bottom the body corporate was infected with the disease of sloppiness.<sup>12</sup>

In the face of such strong criticism of P & O's management, it may seem surprising that the manslaughter prosecution of the corporation and several of its directors failed abysmally. In essence, the reasons underlying that failure can be summarized as follows:

(1) *No Vicarious Liability.* – It is a long established principle of English common law that, in general, vicarious liability does not form part of the criminal law.<sup>13</sup> As a consequence, it has been difficult for prosecutors to use criminal conduct of servants of the company to prove manslaughter against its directors.

(2) *No Principle of Aggregation.* – The court was unwilling to *aggregate* the conduct of a number of a corporation's controlling officers – none of whom would have been individually liable – so as to constitute in sum the elements of manslaughter.<sup>14</sup>

(3) *Principle of Identification.* – The prosecution of P & O also revealed that there must be a *link* between the acts or omissions of the corporation and the state of mind and acts or omissions of a

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12 Sheen Report, *supra* note 3, at para. 14.1.

13 Law Com. No. 237, *supra* note 2, at Pt. VI: Corporate Manslaughter: The Present Law, para. 6.8 (citing *Huggins* 2 Ld. Raym. 1574, 92 Eng. Rep. 518 (1730) (Eng.)).

14 *Id.*

director.<sup>15</sup> Thus, for a corporation to be guilty of corporate manslaughter someone identified as the embodiment of the company itself must also be personally guilty of manslaughter.<sup>16</sup> If the link can be established the crime will be imputed to the corporation.

Generally, persons identified with a corporation are the Board of Directors, the Managing Director and perhaps other senior persons who have authority to control actual operations of the corporation or part of them. One well known English judge illustrated the identification principle by likening a corporation to a human body, stating:

It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants . . . who are nothing more than the hands to do the work and cannot be said to represent the mind or will. Others are the directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.<sup>17</sup>

Therefore, a corporation cannot be convicted of manslaughter unless a defendant-director was himself/herself guilty of

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<sup>15</sup> Law Com. No. 237, *supra* note 2, at Part VI: Corporate Manslaughter: The Present Law, para. 6.49.

<sup>16</sup> *Id.*

<sup>17</sup> H.L. Bolton (Engineering) Co. Ltd. v. T.J. Graham & Sons Ltd., [1957] 1 QB 159, 172 (C.A. 1956) (Eng.).



manslaughter. This could not be proven in the P & O prosecution as evidence was not available to prove any of the individual defendant-directors possessed the requisite degree of foreseeability in relation to any risk of death or serious injury created by his or her actions or inaction.

Indeed, the difficulties created by the identification principle are such that the more diffuse the structure of the corporation, and the more devolved the powers that are given to semi-autonomous managers, the easier it will be for corporations to avoid liability under the current legal regime.

### III. WHAT IS BEING PROPOSED?

The Law Commission has recommended that the new offense of Corporate Killing should hinge on whether there has been a failure in the management of a corporation's activities. In particular, the Law Commission states that a corporation is guilty of Corporate Killing if a management failure by the corporation is the cause or one of the causes of a person's death "and its conduct fell *far* below what could reasonably be expected of it in the circumstances."<sup>18</sup>

What then will constitute a management failure and when will such a failure constitute conduct falling far below what can reasonably be expected? A management failure is defined by the Law Commission as follows:

for the purposes of the corporate offence, a death should be regarded as having been caused by the conduct of a corporation if it is caused by a failure, in the way in which the corporation's activities are managed or organised, to ensure the health and safety of persons employed in or affected by those

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<sup>18</sup> Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing, paras. 8.34-8.35.

activities.<sup>19</sup>

In the absence of further definition, or relevant judicial comment in other contexts, it is difficult to expand upon the definition in a useful way. However, applying the definition to a real example may be helpful in revealing how a management failure can be defined in practice.

In 1995, a Boeing 737 aircraft operated by an English scheduled airline was involved in an incident which led directly to the airline being fined an unprecedented \$500,000 even though no loss of life, injury or property damage occurred. On February 23, 1995 a British Midland Airways flight from East Midlands Airport bound for Lanzarote Airport in the Canary Islands was forced to make an emergency landing thirteen minutes into the takeoff.<sup>20</sup> The aircraft's instruments indicated that each engine had only 1 1/2 liters of oil which subsequently resulted in a significant loss of oil pressure in both engines.<sup>21</sup> The pilot, Mr. Barney Reichman, noticed the rapid oil loss. He diverted the aircraft to the nearest airport, shut down the engines during the landing roll and successfully landed the aircraft.<sup>22</sup> A serious accident was averted because the Captain was closely monitoring the engine instruments during take-off phase and because the Captain demonstrated consummate skill in

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19 *Id.* at Pt. VIII: A New Offence of Corporate Killing para. 8.35(4).

20 See Harvey Elliott, *UK: Holiday Jet Alert As Engines Run Out of Oil*, THE TIMES (London), Mar. 2, 1995; see also Harvey Elliott, *Pounds 150,000 Fine For Airline That Put Passengers At Risk*, THE TIMES (London), July 26, 1996.

21 *Id.*

22 *Id.*

landing the aircraft whilst in a virtual glide.<sup>23</sup> None of the 183 passengers on board were injured.<sup>24</sup>

During the previous night the General Electric CFM-56 Engines had been subject to a borescope inspection, an inspection in which an optical tube is inserted into the engine to look for damage.<sup>25</sup> It was discovered that the High Pressure (HP) rotor covers over the gear box of each engine had not been refitted. The failure of the ground maintenance teams to replace these rotor covers resulted in the loss of virtually all oil from both engines during the flight.<sup>26</sup>

So why had the HP rotor covers not been refitted? Was it an isolated act of carelessness or was it indicative of some deeper problem within the airline concerned? The report of the official investigation into the incident published by the Air Accidents Branch of the Department of Transport included an extensive analysis of the event.<sup>27</sup>

The report found that the borescope inspections were started by a Line Engineer who, because he was running a shift short-handed, eagerly accepted an offer to complete the job from the Base Maintenance Controller.<sup>28</sup> The Controller in turn had his own

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23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 Aircraft Accidents Report No: 3/96 EW/C95/2/3, *Report on the incident to a Boeing 737-400, G-OBMM near Daventry on 25 February 1995*, at Synopsis, Air Accidents Investigation Branch, Department of Transp. (visited Mar. 4, 1999) <<http://www.open.gov.uk/aaib/gobmm.htm#Causes>>.

28 *Id.* at sec. 2.3.2(a)-(b).

manning difficulties.<sup>29</sup> However, he was attracted to the job because of his concern about the impending lapse of his 750 hours borescope authorisation and the limited opportunities Base Engineering gave him to keep it current.<sup>30</sup>

At the time of the incident, there was no existing warning system within the airline to act as a red flag with regard to any shortage in staffing levels.<sup>31</sup> Further, the airline's Procedures Manual did not define any procedure to cover the transfer of a partially completed job from Line to Base Engineering.<sup>32</sup> At the time of the borescope inspection handover, the Line Engineer and the Base Maintenance Controller were satisfied "after a verbal exchange, that the existing state of the aircraft and the total requirement of the task were well understood."<sup>33</sup> However, subsequent analysis of the facts, revealed that the Controller did not fully appreciate what had been, or remained to be, completed.<sup>34</sup>

The Controller completed the inspection using his own set of Borescope Inspection training notes – which he knew to be an unapproved reference that had not been updated and carried a warning that they should be used for training only.<sup>35</sup> The reason the Controller used own training notes was because he had added information in them which he used to help determine the size of any

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29 *Id.*

30 *Id.*

31 *Id.* at sec. 2.3.2(c).

32 *Id.* at sec. 2.3.3.

33 *Id.*

34 *Id.*

35 *Id.* at sec. 2.3.5.

defect or damage he might find inside the engine.<sup>36</sup> As a result of using a reference source which he knew to be unapproved for a task with which he was not currently familiar, the Controller made it virtually certain that he would deviate from the correct practices of the airline.<sup>37</sup> This resulted in the Controller making serious mistakes, "including failure to fit the HP rotor drive covers and not performing an engine run which would have revealed the omission".<sup>38</sup> In addition to anticipating any difficulties which might arise in Base Maintenance work that evening, the Controller also had to deal with multiple diversions and interruptions.<sup>39</sup> This was particularly the case because of the depleted staff of Base Maintenance Inspection and absence of Supervisors on duty that night. The Controller therefore showed bad judgment in taking on the inspections in addition to his normal work.<sup>40</sup>

After the incident, the airline conducted an internal enquiry into its engineers practice of conducting borescope inspections. The enquiry discovered:

... a significant mis-match between the number of inspections conducted and the number of HP rotor drive cover O-rings used, indicating that contrary to the specific requirements and warnings in the AMM (Aircraft Maintenance Manual), O-rings were routinely being re-used. In addition, a survey of engineers authorised for borescope inspections revealed that post inspection engine runs were

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36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.* at sec. 2.3.6.

frequently omitted. This is not only contrary to the direct requirements of the AMM but its also contrary to good engineering practice . . . .<sup>41</sup>

The airline survey of borescope inspection history makes it clear that the Quality Assurance (QA) department had not identified the frequent deviations from a procedural approach and failures to observe requirements of the AMM over a considerable period of time. . . .<sup>42</sup>

Some of the QA engineers did not understand their terms of reference to include a remit to roam the hangars to observe work in progress as a matter of course, nor were they prompted to do so. They did not, therefore, create opportunities to observe any deterioration in adherence to standards or proper practice to put corrective action in hand.<sup>43</sup>

[Moreover], . . . night shifts tended to be relatively sparsely manned and it was more likely that people would be working in a more isolated manner. Furthermore, not only was there seldom any QA or Planning available at night, but the presence of any form of senior management was rare; this situation gives rise to the potential for a more relaxed and less procedural environment to develop unnoticed, except by results.<sup>44</sup>

It is clear from the above information and official analysis that the self monitoring system used by the airline, in common with other

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41 *Id.* at 2.5.

42 *Id.* at 2.6.

43 *Id.*

44 *Id.*

airlines, was jeopardised by poor judgment exercised by one person within a system which, during night-time, was defective in a number of entirely predictable respects. Whether such a chain of events would have put the airline at risk in relation to Corporate Killing if the Captain had not been able to land the aircraft safely without loss of life (and the offense existed) would depend, according to the Law Commission's recommendation, on the circumstances against which the management failure should be judged.<sup>45</sup> The ambit of relevant *circumstances* is not defined by the Law Commission. Consequently, in every case, it would be a matter for the jury to decide by balancing such matters as 1) the likelihood and possible extent of the harm arising from the way in which the corporation conducted its operations, weighted against the social utility of its activities and the cost and practicability of taking steps to eliminate or reduce the risk of death or personal injury; and 2) the extent to which the corporation's conduct diverged from practices generally regarded as acceptable within the industry in issue.

#### IV. POTENTIAL EFFECTS OF THE PROPOSED LEGISLATION

##### A. *The Relevance of Foreseeability*

Under the new legislation there would not be a requirement to show foreseeability of the risk of death or serious injury resulting from an act or omission, whether to a hypothetical person in the defendant's position or to the defendant itself.<sup>46</sup> This is because it is logically impossible to hypothesise a human being as being in the same position as a corporation. Therefore, it would be meaningless to enquire whether the risk could be obvious to a corporation.<sup>47</sup>

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45 Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing, para. 8.36.

46 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.4.

47 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.3.

## B. *Causation of Death*

A defining question with respect to the new legislation is whether the management failure caused or contributed to the cause of the death.<sup>48</sup> It follows that it would always be necessary for the prosecution to rebut any suggestion that reasonable doubt exists which suggests that the death would have occurred irrespective of the management failure. Therefore, in the airline example mentioned earlier, it is arguable that practicable steps could have been taken to ensure that maintenance work was undertaken in accordance with approved systems of work which were adequately monitored.

## C. *Employee Negligence*

In practice, it is likely that the operational negligence of one or more of the corporation's employees will be most connected in point of time with the death.<sup>49</sup> For example, the deaths resulting from the Herald of Free Enterprise disaster could arguably have been avoided but for the actions of the assistant bosun.

Under existing rules of causation something known as the stage already set principle would result in the law declining to look behind an employee's conduct for other persons and corporate bodies who may have contributed to the employee acting as he did.<sup>50</sup> It follows, therefore, that whilst employee(s) concerned may be

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48 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.39.

49 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.37.

50 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.38, (citing ANDREW ASHWORTH, *PRINCIPLES OF CRIMINAL LAW* 123 (2d ed. 1995); see also J. H. MUNKMAN, *EMPLOYER'S LIABILITY AT COMMON LAW* (11th ed. 1990) and H.L.A. HART & T. HONORE, *CAUSATION IN THE LAW* ch 1 and *passim* (2nd ed. 1985).



individually guilty of involuntary manslaughter on the basis of their gross negligence, corporations, under the current rules can obtain protection by invoking the 'stage already set' principle.<sup>51</sup>

However, under the new rules it is not intended that the employee's conduct will absolve the corporation from liability if the mistake or negligence that occurred was the result of a management failure to take precautions to prevent such conduct.<sup>52</sup> The Law Commission neatly summarises the point as follows:

If a company chooses to organise its operations as if all its employees were paragons of efficiency and prudence, and they are not, the company is at fault; if an employee then displays human fallibility, and death results, the company cannot be permitted to deny responsibility for the death on the ground that the employee was to blame. The company's fault lies in its failure to anticipate the foreseeable negligence of its employee, and any consequence of such negligence should therefore be treated as a consequence of the company's fault.<sup>53</sup>

#### D. *Independent Contractors*

Normally, the employer of an independent contractor is not criminally responsible for the contractor's negligence. In the case of Corporate Killing, the obligations of a corporation will be increased in that it will be for the jury to determine, 1) whether the death immediately caused by a contractor was attributable, at least in part, to a management failure of the part of the corporation for whom the

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51 Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing, para. 8.39.

52 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.37.

53 *Id.*

contractor was working at the time and, 2) if so, whether the "failure amounted to conduct falling far below what could reasonably be expected of the company in the circumstances."<sup>54</sup>

Such a determination would be made by reference to, *inter alia*, the nature and gravity of the risk, the competence and experience of the contractor, and the nature of precautions taken.

#### E. *Those Liable to Prosecution*

Originally it was proposed by the Law Commission that individuals could not face a charge of Corporate Killing.<sup>55</sup> However, presently the UK Government wants to include directors as potential defendants as well, but has given no indication yet as to how the proposed offense will be extended to accommodate that requirement.<sup>56</sup> A clue as to how the issue will be treated may lie in current Health and Safety at Work legislation which provides that where an offense is committed "with the consent or connivance of, or having been attributed to any neglect on the part of, any director, manager . . . or other similar officer of the body corporate or someone purporting to act in that capacity, he as well as the body corporate shall be guilty of that offence . . . ."<sup>57</sup>

#### F. *Those Who Will Be Able to Bring Charges*

Currently, there are no restrictions proposed as to who can

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54 *Id.* at Pt. VIII: A New Offence of Corporate Killing, para. 8.44.

55 *Id.* at Pt. VIII: A New Offence of Corporate Killing, paras. 8.58 and 8.77.

56 Halligan & Rice, *supra* note 3, at 8 (On October 2, 1997 Home Secretary Jack Straw stated there is a "strong argument for considering in detail . . . laws which provide for the conviction of company directors were it's claimed that dreadful negligence by the company as a whole has meant people have died.").

57 Health and Safety at Work Act of 1974 § 37(1).

bring charges of Corporate Killing.<sup>58</sup> Therefore, if the proposals are brought into force it is likely that both public prosecutions and private prosecutions by relatives of the deceased will be permitted. Unlike the U.S.A., private prosecution by individuals are generally permitted under criminal law.<sup>59</sup> The impact of this on the handling of tortuous claims is considered later in this article.

G. *Potential Penalties*

It is envisaged that if a corporation is found guilty of Corporate Killing it will be liable for an unlimited fine.<sup>60</sup> It is also proposed that the Court will have power to order that specific remedial action be taken within a fixed time scale, such remedial actions and time scales to be determined by reference to the manner of the corporations failure which resulted in the cause or one of the causes of the death.<sup>61</sup> In addition, it has also been suggested by the Government that directors and/or senior managers found guilty of Corporate Killing should themselves face a fine and/or imprisonment.<sup>62</sup>

H. *Risks Associated With Companies Incorporated Outside the United Kingdom*

It is intended that the proposed offense will be actionable both

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58 See generally the Law Com. No. 237, *supra* note 2.

59 *Section 6(1) Prosecution of Offences Act 1985.*

60 Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing, para. 8.71 and at Pt. VII: Our Provisional Proposal In Consultation Paper No. 135, para. 7.25; *see also* Halligan & Rice, *supra* note 3.

61 Law Com. No. 237, *supra* note 2, at Pt. VIII: A New Offence of Corporate Killing, para. 8.72.

62 *Id.* at Pt. VIII: A New Offence of Corporate Killing, paras. 8.34-8.35.

inside and in certain circumstances outside the United Kingdom if the fatal accident occurs in a place which English courts have jurisdiction; namely, England and Wales; on any vessel in territorial waters; or a British vessel elsewhere; or on a British-controlled aircraft in flight outside the UK; or on certain oil/gas rigs.<sup>63</sup>

## V. CONCLUSION

Despite the apparently radical nature of the proposed new offense of Corporate Killing, it seems unlikely that the existing obligations of corporations and their management to ensure the safety of their employees and the general public will change noticeably as a result of the addition of the offense to the statute books. This is because a Corporate Killing management failure must not only fall below what could be reasonably expected, but it must fall far below, with the result that the corporate negligence must be very serious before a prosecution can have a reasonable prospect of being sustained.

There can be no doubt, however, the public approbation/corporate shame likely to result from a prosecution (regardless of outcome) will be such that few corporations would wish to go through the experience if they can avoid it. In practice, therefore, the introduction of the offense is likely to provide a significant new weapon in the armoury available to those seeking compensation for death claims after accidents, especially if private prosecutions are permitted under the new rules, and directors are exposed to the rigours of Corporate Killing as well. For United States corporations doing business in the United Kingdom, this means their ability to resist having to deal with claims on the basis of United States compensation standards (rather than the lower English equivalent) will be materially weakened, even though *forum non conveniens* defences may remain available to civil suits in their home jurisdiction. Likewise, once a corporation has been convicted of the

new offense, there can be little doubt that civil liability lawsuits in the civil courts will be undefendable.