



## **Amicus comments on the Culpable Homicide (Scotland) Bill**

### ***General***

Amicus strongly supports the draft Culpable Homicide (Scotland) Bill, as presented by Karen Gillon, MSP.

Amicus also agrees substantially with the detailed comments made on this Bill by the STUC. Rather than repeating these comments, we will seek to add to them and highlight some important points.

We are aware that the Home Office has published a draft Bill (of which we have many criticisms) that belatedly covers Scotland, however, we will comment on the Bill as a whole since there are many parts of it that are superior to the proposed UK Bill, and there are parts that are very relevant to the Scottish situation which do not appear to be addressed by the UK Bill.

### **1.1**

***Do you have any comment to make on the need for legislation of this type as detailed in this paper to ensure equality across companies in relation to culpable homicide?***

Amicus agrees that the existing legislation is inadequate and tends to discriminate against smaller companies, where it is much easier to identify a “controlling mind”.

### **1.2**

***Do you have any comment to make on the proposals outline that suggest that there be two different statutory kinds of culpable homicide – culpable homicide by causing death recklessly and by gross negligence?***

Amicus welcomes the proposals in the Bill for two new offences of “Culpable Homicide by causing death recklessly” and of “culpable homicide by gross negligence”.

The first new proposed offence would allow for prosecutions, mainly of individuals, if they should have been aware of the risk of their actions but carry on regardless resulting in the death or deaths of others. Amicus strongly

supports this approach, since we believe that Directors and Senior Managers of organisations will only change their behaviour if they perceive the possibility of serious sanctions against them personally.

The proposed second offence involving gross negligence would close the loopholes identified in the Transco case.

As far as Amicus is concerned, it is absolutely essential that these two elements are reflected in the law.

### **1.3**

***Do you have any comment on the definition of organisations and office holders in section 8 and 9 of the Bill?***

Amicus welcomes the definition of an organisation outlined in Section 8 of the Bill and particularly the fact that it covers a broad range of organisations. The law needs to apply to all employing bodies, including government departments, partnerships and other non incorporated bodies.

We support the definition of an office holder since the law needs to recognise the ways that decisions are taken within organisations. The Bill establishes that liability must be held at a sufficiently senior level, but does not restrict the liability to any particular level of management. It is particularly important that the definition refers to "... management or organisation of the **whole or any part** of its activities ..." (our emphasis).

We believe that this will avoid the potential scapegoating of junior managers or others at lower levels within an organisation, but we would also want assurances that this is the case.

### **1.4**

***Do you have any comment to make on the provisions of the Bill applying to Ministers, civil servants and Crown bodies in the same way as they apply to natural persons and organisations, as set out in sections 12 and 13 of the Bill?***

Amicus believes that Crown immunity from prosecution should be removed in all cases.

## **Culpable homicide by causing death recklessly**

### **2.1**

***Do you have any comment to make on the way that causing death recklessly is defined in paragraph 3.5 of the proposal and detailed in section 2 of the Bill?***

Amicus welcomes this definition. It rightly covers those who act deliberately and those who may not be aware of the risk and consequences of their actions but should have been.

The additional offence is absolutely necessary to close the loopholes in the current legislation.

## **2.2**

***Do you have any comment to make on the proposal that an organisation is made responsible for the actions of their employees for this offence (made vicariously liable) as proposed in Section 4 of the Bill?***

Amicus believes that organisations must take responsibility for the actions of their officers and employees. This is the only way that directors and senior managers will fully take on board their responsibility for managing the organisation.

## **2.3**

***Do you see any difficulties as to how aggregation as proposed in Section 4(2) of the Bill will work in practice?***

Whilst we are aware of some of the difficulties in this concept, Amicus supports the inclusion of section 4 (2) as it will mean the Courts will have to consider the aggregation of the actions of different individuals within the company, and at different times, when considering whether the offence has been committed.

## **Culpable homicide by gross negligence**

### **3.1**

***Do you have any comment to make on proposals set out in paragraph 3.7 to re-introduce culpable homicide by gross negligence into the law in Scotland?***

Amicus supports the proposals in 3.7, since it must be possible to hold organisations directly liable for culpable homicide.

### **3.2**

***Do you have any comment to make on how these proposals are defined in section 5 of the Bill?***

Amicus strongly supports the concept of management failure of any organisation being used as the basis on which liability can be attributed to the organisation.

We particularly welcome 5(2), which makes it clear that the senior management of an organisation can be held liable for the actions of others under their control.

### **3.3**

***Do you see any difficulties with what is proposed to define what is meant by that offence where it is committed by a natural person in section 3 and by an organisation in section 5 of the Bill?***

We do not see any real difficulties in this. We do think it is essential to provide real justice for those who are injured and for the families of those that are killed. We see sections 3 and 5 of the Bill as a perfectly reasonable consequence of this.

### **3.4**

***Do you have any comment to make on the definitions of a duty of care and gross breach as proposed in section 6 and 7 of the Bill?***

Amicus supports the definition of a duty of care and opposes any restrictions being placed on the limit of an organisations breach of this duty of care.

We support the definition of gross breach in relation to the duty of care placed on individuals and organisations.

### **3.5**

***Do you see any difficulties with the definitions of a duty of care and gross breach as proposed in sections 6 and 7 of the Bill?***

Amicus does not envisage any difficulties with this.

## **Sanctions**

### **4.1**

***Do you have any comment to make on the penalties detailed in section 11 of the Bill?***

Amicus supports the current content of the Bill, particularly the clear possibility of the imprisonment of office holders found guilty of an offence, but we also want to see included a much broader range of penalties.

Amicus believes there should also be a range of potential non-custodial sentences against individuals. A number of options should be considered, including personal fines, suspension or disqualification of directors, retraining or remedial training orders, and community service orders against directors or senior managers.

As far as corporate penalties and sentencing are concerned, we think there needs to be more than just large fines. Amicus would like to see the Courts exploring more imaginative, additional penalties. We see these as additional, not as alternatives, to fines.

There are a number of measures other alternatives that we think might be effective:

- For organisations we should be considering Corporate Probation. The Court should have the power to place conditions on an organisation. These could include setting periods of time during which the organisation must deliver identified, good practices. The Court could require companies to employ additional advice, or train managers and so on.
- Organisations could also be subject to Corporate Community Service Orders, requiring them to make special provisions for workers, relatives or to the local community. This would mean putting something back into a community, or to families, or to workers that have been affected by a death or deaths.
- Another type of order is a Negative Impact Order. This would require a company to pay for prominent advertising informing people that they have been convicted.