



Culpable Homicide (Scotland) Bill Consultation – January 2019

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train drivers' union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems. The union has just under 1,750 members in Scotland.
2. The proposed bill is intended to address an issue with the current laws surrounding corporate manslaughter and corporate homicide, making it more possible to secure a conviction where there has been recklessness or gross negligence on the part of an individual or organisation. ASLEF is fully in support of this principle and the proposed Bill.
3. It is extremely concerning that 17 people are killed in work related incidents in Scotland each year, and that a worker in Scotland is more likely to be killed at work than a worker in England. The union believes this is an unacceptable situation and therefore supports any moves to reduce the number of work-related deaths in Scotland and hold to account those whose negligence or recklessness lead to loss of life.
4. Given the lack of successful convictions by COPFS under the 2007 Corporate Manslaughter and Corporate Homicide Act since it was introduced, there is a clear need for a change in the law. A lack of prosecutions reduces the incentive for employers to maintain high standards of health and safety in the

workplace. This in turn leaves workers vulnerable to incidents which are foreseeable and preventable.

5. The union believes that the current law in relation to culpable homicide is lacking clarity and consistency in several respects. Individuals and organisations seem to have very different rules applied to them, and the law also applied inconsistently to organisations of different sizes. There is a further inconsistency with the application of the law to ministers and crown bodies. ASLEF believes that this situation is unacceptable, and that as a matter of principle all laws should apply consistently to all.
6. The proposed Bill will provide clarity as to the circumstances when all types of wrongdoers (individual and organisations of all sizes, including ministers, civil servants and crown bodies) will be guilty of culpable homicide. This will level the playing field and provide one clear set of rules which apply to all types of wrongdoer.
7. Ensuring that conviction is a real possibility for all organisations will serve as a clear incentive to individuals and organisations to implement and uphold strong health and safety practices across all their activities, making Scottish workers and citizens safer.
8. The union is aware that with previous attempts to bring forward similar proposed legislation it has been suggested there are potential difficulties in respect of legislative competence. The union notes that the Scottish Parliament and Scottish Government have been willing and able in the past to bring forward legislation which pushes at the boundaries of legislative competence, and therefore believes that the issue instead comes down to political will.
9. ASLEF understands that the Bill proposed is competent by reason of Section 29(4) of the Scotland Act 1998, as the purpose is to make an important area of Scots Criminal Law apply consistently to both reserved and non-reserved matters. The union therefore calls on the Scottish Government and Scottish

Parliament to take a strong stance on this issue and drive forward the necessary reforms.

10. As regards the definitions proposed in the consultation, ASLEF agrees that the approach of making two different statutory types of culpable homicide – gross negligence and recklessness – is sensible. While in many cases there may well be an overlap between the two tests, having the two ensures that there are no gaps in the law where circumstances may meet one but not the other. The union agrees with the key principle that individuals and organisations who cause death by both recklessness and gross negligence are, and should be, guilty of culpable homicide.
11. The union does not believe that any organisation should be exempt or excluded from the Act. Any exemptions to this law could leave Scottish citizens and Scottish workers open to dangerous situations, and reduce the incentive for exempted organisations to implement strong and effective health and safety practices. This is unacceptable.
12. Furthermore, ASLEF believes that the proposed law should follow the principles of vicarious responsibility that are well recognised in civil law in other areas where organisations are held responsible for the wrongdoings of their officers and employees. Any office holder or manager who is acting within their delegated authority should be considered to be acting as the organisation and, as such, the organisation is as culpable as the individual in such cases.
13. It therefore follows that the term ‘office holder’ should be defined as widely as possible. It should follow the recognised vicarious responsibility model and should encapsulate all circumstances where managers and supervisors are acting within their delegated authority.
14. ASLEF believes that the inclusion of aggregation as proposed in the consultation document is necessary, and indeed essential, to ensure that the law reflects the reality of the way that organisations operate. It is further necessary to make sure that there are no gaps or loopholes in the law.

15. The union believes that the penalties available to the judge on conviction must reflect the moral opprobrium of the offence. We believe that the penalties must be sufficient to serve as a real deterrence. We therefore believe that the highest and most severe penalties must be available in appropriate cases. This should include custodial sentences.
16. To ensure that the law is consistently applied we believe that custodial sentences should be available not only in circumstances where the offence is committed by an individual but also in appropriate circumstances where an organisation is convicted. There will therefore be circumstances where senior office holders of an organisation may face a custodial sentence by reason of the organisation being convicted.
17. The union also believes that penalties should include remedial orders and publicity orders, and that families should have the automatic right to make victim statements in all convictions for culpable homicide.
18. ASLEF agrees that this Bill is long overdue, and reiterates the union's full support for the Bill's aims to bring consistency to the law governing culpable homicide, and to keep the people of Scotland safer.