

Response to Scottish Government Consultation: Culpable Homicide (Scotland) Bill

Purpose: This consultation proposes the creation of a Bill to amend the law of culpable homicide to ensure that where loss of life is caused by the recklessness or gross negligence of individuals, companies or organisations that, the wrongdoer can be convicted of the offence that reflects the appropriate seriousness and moral opprobrium of what occurred.

Consultation Question Responses

Do you have any comment to make on the way in which causing death recklessly is defined in the proposal?

The new definition of 'causing death recklessly' introduced by the proposal is much clearer when comparing it to the existing definition. This is likely to enhance the overall understanding of the offence and will make it simpler for stakeholders to understand the liability of organisations.

Do you have any comment to make on the proposal that organisations would be responsible for the actions of their employees for this offence?

Making organisations vicariously liable for the offence will encourage employers to ensure that all employees are trained and instructed to the highest of standards. Equally, this may also help to reassure employees who are undergoing any internal enquiries and make them feel less isolated in the investigation and more willing to engage as a result.

The proposal to distinguish between larger and small organisations will also be a positive step and enable COPFS to more easily secure culpable homicide convictions against those larger entities. It is acknowledged that larger companies can currently escape conviction more easily than smaller companies under the existing test (which requires the death to be linked to the gross breach of duty of its senior management). It is agreed that this weakness in the legislation should be addressed to remove this loop hole and help to ensure that smaller companies are no longer unfairly discriminated against.

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

If a re-introduction of culpable homicide by gross negligence were to take place, it is pertinent that the offence is introduced with sufficient clarity, time and guidance to ensure that organisations and law enforcement agencies can easily understand and implement the requirements. This will help to ensure that the law can be better applied and utilised.