

Culpable Homicide Consultation – Individual Response

- Elaine Smith MSP, Scottish Parliament, EH99 1SP
- I am responding as an individual
- I am an elected Member
- I am content for this response to be published and attributed to me
- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data may be used

Aim and Approach

I fully support the proposed bill.

I believe that the law of culpable homicide in Scotland is not fit for purpose. The law is confused and does not apply consistently across individuals and different types of organisations.

We need one clear set of rules that apply to everyone – individuals, small organisations, large organisations, ministers and crown bodies. That is exactly what the proposed bill will achieve and that is why it has my full support.

This is the third member's bill during my time in Parliament that has sought to address a serious injustice and I strongly believe that this must be followed through.

I believe that where it is proven that an individual or an organisation causes death through recklessness or gross negligence they are guilty of culpable homicide. I therefore support the bill containing both tests.

No organisation should be exempt from the law of culpable homicide. No organisation should be "too big to be convicted".

The proposed addition of the two statutory offences to those already contained in common law is to be welcomed, as is the intention to allow for the aggregation of actions of various officeholders within any one organisation, in order to improve the identification of liability where cumulative actions have led to an incident occurring.

This bill as proposed should also ensure the law will serve as a real deterrence which will be to the benefit of everyone. I welcome the opportunity this Bill provides to focus attention on the importance of strong health and safety protection in the workplace, which I also believe sits comfortably with the aspirations in Scotland with regard to Fair Work.

Sanctions

The widest sanctions must be available to Judges. That includes imprisonment and remedial orders. Victim impact statements should be mandatory in all cases where there is a conviction for culpable homicide. In appropriate cases senior management and directors of organisations should face the prospect of custodial sentences, and I agree with the approach taken in the proposed bill which would see serious consequences in addition to any fines incurred, for both the company and those individuals responsible for any serious injury or death.

Elaine Smith MSP 24.04.19