

Britain: Labour government backtracks on corporate killing law

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Directors of large companies that cause fatal accidents will escape the threat of prison or disqualification, following a U-turn by Home Secretary David Blunkett.

The Home Secretary has been persuaded that government plans to make board members individually liable for train crashes and other disasters were legally unworkable. Instead, a new law on corporate killing—which could be included in this autumn’s Queen’s Speech—will concentrate virtually all the punishment on the companies, rather than their managers and directors. Government proposals to disqualify automatically any individuals who had “some influence on, or responsibility for” the management failure that caused the fatal accident have been dropped.

The shift in policy is revealed in a Home Office letter sent this month to companies in industries with relatively high fatality rates—including transport, mining and construction—and to some unions and public sector bodies. It suggests the government is preparing to legislate to fulfil its manifesto commitment to introduce a new corporate killing offence—first mooted by Jack Straw, then Home Secretary, within days of the 1997 Southall train crash.

The Home Office refused to give a target date for the new law after government proposals issued in 2000 caused a storm of protest from industry, not least because of the disqualification risk for directors.

Companies are now being asked to help complete a regulatory impact assessment, a standard procedure for draft laws nearing the statute book. The law will create a new criminal offence of corporate killing for deaths caused by management failure, where the company’s conduct fell “far below what could reasonably be expected.” The influential business lobby group, the

Confederation of British Industry (CBI), has objected to this test, claiming it could “leave companies defenceless.”

Flaws in the manslaughter law have resulted in several failed prosecutions against large corporations. Only three small companies have been convicted of criminal manslaughter since the Second World War. According to lawyers, the new corporate killing offence could result in more prosecutions and heavier fines than current legislation.

The Labour government has a history of backtracking. At the beginning of August the government put its plans to introduce a corporate killing law on hold under pressure from the CBI, which complained that the draft proposals allowed for the “pursuit of individuals” not directly in charge of health and safety, such as board members. Although the public sector—in particular hospital trusts and schools—would be bound by the same strict legislation, its opposition to the corporate killing offence has been much more muted. The Home Office said that it had failed to negotiate time to introduce legislation on the issue in the next session of parliament, which meant that it was unlikely to become law any time before 2004—seven years after Labour promised to create the offence.

The move towards legal reform first took shape in March 1996 when the Law Commission published a report on Involuntary Manslaughter and published a draft bill for consultation. The bill recommended that there should be a special offence of “corporate killing,” broadly corresponding to the individual offence of killing by gross carelessness. It said that—as with the individual offence—companies should be liable to prosecution if the conduct that caused death fell below what could reasonably be expected.

Labour has formally supported a tightening of corporate manslaughter legislation since the Zeebrugge ferry disaster case collapsed on October 19, 1990. “It seems that the British courts have confirmed that companies are not responsible for their actions in regard to the safety of their operations,” said John Prescott, then opposition transport spokesman. He added that a Labour government would legislate to ensure there was corporate responsibility.

When Labour came to power seven years later, then Home Secretary Jack Straw announced plans for a new corporate killing law at a Labour Party conference on October 2. “Many countries do have laws which provide for conviction of directors of companies where it’s claimed that, as a result of dreadful negligence by the company as a whole, people have lost their lives. There’s a strong argument for having such provisions so that people cannot be criminally negligent and allow innocent people to go to their deaths, and suffer no punishment,” said Straw.

In May 2000 Straw finally published the proposals for the corporate killing law, called *Reforming the law on involuntary manslaughter: the Government’s proposals*. It said: “The present law in this area is unclear... where corporations are concerned, it is ineffective. Such defects can cause real problems and, indeed, distress, particularly where they mean the criminal law is unable to convict anyone... The law needs to be clear and effective in order to secure public confidence.”

Last May the government pledged in its general election manifesto that “law reform is necessary to make provisions against corporate manslaughter.” The Home Office hoped to have the proposals made law by the end of last year, or “as soon as possible,” but the impetus has since stalled. On March 6 this year the government said, “We are committed to introducing legislation on the issue as soon as parliamentary time allows, but there is no timetable.”

The need to hold organisations to account for deaths in their charge is still terribly self-evident. On 1 October victims of the Potters Bar rail crash announced that they have started legal action against Railtrack and Jarvis, the maintenance contractor, after rejecting a compensation offer because it did not settle the issue of liability. Lawyers representing the survivors and relatives of those who died in the crash in May are also

planning to sue the Health and Safety Executive, the industry’s safety regulator. Formal court proceedings to press the claims will follow “within a short space of time,” the solicitors acting for the newly formed Potters Bar claimants’ group said.

Seven people were killed and more than 70 injured in the crash, which happened after a points failure derailed a high-speed train travelling from London to King’s Lynn. The decision to press ahead with legal action is timed to embarrass the government, which asked the High Court on October 1 to lift the administration order on Railtrack so that it could be taken over by the government-backed rescue vehicle Network Rail.

Louise Christian, who is acting for five of the bereaved families, is urging the government to rethink its refusal to set up a public inquiry into the crash. Christian said the procedure was flawed because the HSE, as the rail safety regulator and crash investigator, “has a massive conflict of interest.” Railtrack offered in August to settle all claims from victims, while setting the issue of liability aside.



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