

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: CULPABLE HOMICIDE (SCOTLAND) BILL CONSULTATION PAPER
From: DIRECTOR OF ADMINISTRATION		
Date: 16 August 2006	Ref: WBKAH/AH	

1. Introduction and Purpose of Report

- 1.1 Karen Gillon MSP has issued a consultation paper on proposals to reform the law on Culpable Homicide in Scotland and is seeking views from all interested parties, including the Council.

2. Background and the Current Law

- 2.1 In Scots Law culpable homicide is established where (1) a person may only intend assault but death results; (2) the perpetrator would be guilty of murder but can establish mitigating factors for example provocation or diminished mental responsibility, and (3) involuntary homicide where a person causes death whilst carrying out a permitted act below the standard required by society.
- 2.2 Transco PLC were convicted of criminal charges under the Health & Safety at Work Etc Act 1974 in relation to the explosion in Larkhall on 22 December 1999 which resulted in the deaths of two adults and two children.
- 2.3 The company were charged with culpable homicide, however the High Court of Criminal Appeal dismissed the charges holding that, whilst competent under Scots Law to charge a company with culpable homicide, conviction required an individual (or group of individuals) "the controlling mind" whose acts and state of mind were that of the company itself, to be identified. This is known as the identification doctrine. As a result small companies, for example a family business or organisation with one owner/director/manager, could be convicted of culpable homicide. In all other organisations it would be impossible to prove the elements of the identification doctrine.
- 2.4 It is argued that the law is inconsistent, uneven, unfair and discriminatory based solely on questions of size and form of organisations.
- 2.5 In 2005 a Scottish Executive expert group reviewed the law on corporate liability for culpable homicide and concluded that current law should not be amended but recommended the creation of a new offence.
- 2.6 The UK Government published a draft Bill in March 2005 proposing a new offence of corporate manslaughter in England and Wales. The Scottish Ministers to date have not introduced a Bill to create an offence of corporate culpable homicide in Scotland.

3. Proposals to Amend the Law of Culpable Homicide

- 3.1 The Bill promoted by Karen Gillon MSP proposes to amend the law of culpable homicide to clarify (1) that an actual person may be guilty of culpable homicide by causing the death of another recklessly or by gross negligence; (2) what are the elements of each of those offences; (3) how an organisation may be liable for each of those offences, and (4) that a

Crown servant or agent (Minister, civil servant or department) may also be liable for these offences.

The proposals will create two different statutory kinds of culpable homicide – culpable homicide causing death recklessly and culpable homicide by causing death by gross negligence. These offences will be in addition to the existing kinds of culpable homicide at common law.

4. **The Consultation Paper**

- 4.1 A copy of the Consultation Paper which has been published has been lodged in the Members' Library or can be requested by e-mail from karen.gillon@scottish.parliament.uk
- 4.2 The draft response which is set out in the Appendix to this report has been prepared and is recommended for adoption as the Council's response to the Consultation.

5. **Corporate Considerations**

- 5.1 The issues contained in this report would have an impact on the Council's Health and Safety Policy. It would also impact on senior officers and elected members in relation to corporate responsibility for causing death.

6. **Recommendation**

- 6.1. That the Committee authorise a response to the Consultation as set out in the Appendix

Walter B. Kilgour

W. **Director of Administration**

NOTE OF COMMENTS BY NORTH LANARKSHIRE COUNCIL TO THE CONSULTATION ON THE PROPOSALS OF KAREN GILLON MSP TO AMEND THE LAW OF CULPABLE HOMICIDE

1. General

- 1.1 North Lanarkshire Council acknowledge that the law of culpable homicide requires to be clarified so that it applies consistently, fairly and evenly to all persons natural and legal.
- 1.2 The creation of two statutory kinds of culpable homicide – culpable homicide by causing death recklessly and by gross negligence is welcomed. This re-introduction of gross negligence into Scots Law will mirror the common law position in England.
- 1.3 The definition of office holders for whose acts the organisation would be vicariously liable, will have a huge impact on an organisation such as ours where many officers of the Council would fall within the definition as presently framed.
- 1.4 The lifting of immunity from prosecution of any Crown servant or agent, whether a Minister, civil servant or a department, is welcomed.

2. Culpable Homicide by Causing Death Recklessly

- 2.1 Definition of causing death recklessly which will allow recklessness to be established objectively without any guilty mind is welcomed.
- 2.2 North Lanarkshire Council are of the view that the automatic imposition of vicarious liability is not acceptable. An organisation may have made considerable effort to prevent the kind of incident which caused the death or prevent the actings of the office holder which brought about the death of another person. Definition of “acting within the scope of the office” or “acting on behalf of the organisation” requires further clarification.
- 2.3 Office holders within a local authority carry out their duties within a legislative and policy framework. Therefore a Court may find it easier to extract the necessary elements for the offence when dealing with a Government department or local authority than with other organisations.

3. Culpable Homicide by Gross Negligence

- 3.1 North Lanarkshire Council welcome the re-introduction of culpable homicide by gross negligence into the Law of Scotland.
- 3.2 North Lanarkshire Council has serious reservations with Section 5 of the Bill. A local authority’s management and organisation of its activities are ever-increasingly done within financial constraints externally imposed. Circumstances could arise where a local authority despite strenuous efforts are, due to financial constraints or recruitment difficulties, unable to discharge their duty of care. The local authority could be found guilty of culpable homicide unless they were able to establish that their failure in those circumstances was conduct that could reasonably be expected.
- 3.3 North Lanarkshire Council have no comment to make on the definition of duty of care. Difficulties for local government in relation to the definition of gross breach are outlined above in 3.2.
- 3.4 Again reference is made to our comments at 3.2 above.

4. Sanctions

- 4.1 North Lanarkshire Council are of the view that the imposition of a financial penalty on a local authority would not be necessary to reinforce the accountability for their actions which led to the conviction. Any financial penalty would be required to be met from existing budgets and would have an adverse effect on service delivery to local residents.

**Director of Administration
August 2006**