



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

**Corporate Manslaughter and Corporate
Homicide Act 2007**

30 June 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Colum Eastwood
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Peter Weir
Mr Jim Wells

Witnesses:

Mr Gareth Johnston) Department of Justice
Mr David Mercer)

Mr Max Murray) Northern Ireland Prison Service

The Chairperson:

I welcome again Gareth Johnston, head of the justice strategy division in the Department of Justice; Max Murray, director of offender policy in the Northern Ireland Prison Service; and David Mercer from the Department's justice strategy division. This session will be reported by Hansard. Gareth, I invite you to outline the proposed statutory rule.

Mr Gareth Johnston (Department of Justice):

Thank you for the opportunity to address the Committee about such an important subject as helping to prevent deaths in custody and detention.

The Committee may find it useful if I say a few words by way of commentary on the paper that we sent you earlier about the Minister's plans and preparations to bring into operation certain provisions of the Corporate Manslaughter and Corporate Homicide Act 2007. Much of this will be familiar to those who served on the previous Justice Committee, which we briefed back in January about our plans. The dissolution of the Assembly interrupted the process, so we are consulting afresh with the new Committee.

The Corporate Manslaughter and Corporate Homicide Act 2007 extends across the UK as a whole, and most of it came into operation in April 2008, when the new offence was commenced for all but one set of circumstances, which was where the death of someone has occurred while he or she is in custody or detention. That is where some of society's most vulnerable and volatile people are accommodated. When the Bill was going through Parliament, it was decided that providers of custody and detention services would be given an extended period to prepare. At that stage, Ministers said that it would be three to five years.

The proposed commencement Order will apply the offence of corporate manslaughter to the custody and detention facilities of the Prison Service, the police, the courts, the Youth Justice Agency and the new immigration centre at Larne. In addition, it will affect secure accommodation for young people and for patients who are being detained under mental health legislation. Those latter two facilities are run by the health and social care trusts.

Finally, I should add that the Ministry of Justice has recently laid an Order before Parliament that will apply in Great Britain. It will expand the scope of the offence to include custody and detention facilities of the armed forces and the customs wing of the UK Border Agency. Our commencement Order would, therefore, cover any armed forces detention facilities and the customs wing of the Border Agency in Northern Ireland.

It may be worth recalling briefly that the new offence of corporate manslaughter was approved by Parliament in 2007 to address difficulties with the old common law offence of gross negligence manslaughter by a corporation. The main problem with the old offence was that to convict a corporation it was first necessary that an individual in the organisation who was regarded as a directing mind be convicted of gross negligence manslaughter. That set too high a threshold for some prosecutions of companies to be possible. Although the new law still requires

gross misbehaviour, it cuts out the need for an individual to be convicted first.

The new offence of corporate manslaughter has a number of elements. It is committed when the way in which an organisation's activities are managed or organised causes a person's death and amounts to a gross breach of a duty of care owed by the organisation to the person who has died. Therefore, the focus is largely on the actions of the organisation's senior management as a whole rather than on those of individuals, particularly those further down the organisation. It is about failures of organisation and management based also on a gross breach of a duty of care.

The 2007 Act does not alter any of the duties of care that are owed, and it does not place additional regulatory burdens on corporations. Rather, by removing barriers to prosecution, it aims to get organisations to work harder to prevent deaths under their care. The new offence applies not only to private companies but to Crown bodies, and there is no Crown immunity from prosecution for the offence. As it is an organisation that would be prosecuted, the main penalty that is available on conviction is a fine. Courts also have powers to order the guilty organisation, first, to remedy the faults linked to the death and, secondly, to publicise not only its guilt but any fine that is imposed and any remedial action that is demanded.

Custody providers UK-wide have been preparing for the provisions to be commenced since the Bill was passed in 2007. They have each carried out risk assessments and identified areas for attention and have implemented work programmes on management, training and infrastructure development.

Previously, the Committee queried the management of investigations of deaths in custody, and it might be helpful if I summarise the actions that are taken when a death occurs. Our most significant custody provider is, of course, the Prison Service, so I will use that as an example. First, the police are called, and the scene is cordoned off. A cordon is set up and the area becomes a crime scene until it is cleared by the PSNI. That is mainly to protect evidence in case a crime has been committed.

The prison governor also informs others, including the next of kin, the coroner, the Prisoner Ombudsman and the Independent Monitoring Board. It is for the police to ascertain whether or not a crime has been committed, and they report their initial findings to the coroner. The Prisoner Ombudsman also investigates how the prison managed the individual as compared with published

policy and procedures. The ombudsman's investigation parallels that of the police, but the police investigation takes precedence. The coroner may then consider whether to hold an inquest. Of all of our various custody providers, the Prison Service probably faces the most challenging background against which to prepare for the Act's introduction. For example, drugs may remain a major concern for prisons. The ombudsman has reported on a number of deaths in custody in recent times as a result of drug abuse.

Mental health is another issue. The South Eastern Health and Social Care Trust has responsibility for providing health services to prisoners. It employs psychiatrists and mental health nurses. However, concerns remain about limits to the service that can be provided in a prison setting. The Prison Service has also been updating its procedures for preventing suicide and self-harm. A revised suicide and self-harm policy and associated standard operating procedures have been published. Furthermore, procedures for supporting prisoners at risk (SPAR) are now embedded as routine practice in Northern Ireland's prisons. Those procedures provide for the day-to-day management and provision of individually tailored care plans for prisoners who are identified as being at risk of suicide or self-harm. The revised suicide and self-harm policy and existing SPAR process provide clear guidance to staff with regard to corporate establishment and individual responsibilities for the provision of care to prisoners.

The Prison Service has taken its preparations for the corporate manslaughter legislation further by completing a scoping study of the current potential risks that are attached to introduction of the provisions of the Act. A plan was drawn up and is being implemented, albeit within the limitations that much of the estate largely comprises old, outdated buildings that are not built to modern specifications; for example, with regard to ligature points and fire and smoke management systems. Max can provide specific details. The action plan includes conventional health and safety issues, such as fire and resuscitation, and specific action on matters that I have mentioned as well as on asbestos and legionella.

As I have indicated, the new offence is mostly about senior management ensuring that appropriate systems are in place and are implemented. Presentations have been made to the Prison Service management board, including a presentation from Translink on its health and safety management arrangements and what it has learned and can pass on to other public sector organisations.

Work is also in hand to introduce a new health and safety management structure to include a strategic corporate health and safety committee, chaired by the director of finance and corporate services. It will review high-risk areas and ensure that remedial work is actioned. Those are just a few of the actions that one custody provider has been taking. Each provider has been implementing an ongoing health and safety programme.

Since the devolution of policing and justice powers, responsibility for commencing the Act's custody provisions in Northern Ireland falls to the Department of Justice. The relevant justice agencies have confirmed to the Minister that they are ready for commencement if the provisions now proceed. The previous Minister of Health, Social Services and Public Safety indicated that he would be content for the provisions to be commenced. David Ford has now asked the current Minister to confirm that he, too, is content.

The Committee will appreciate that it will never be possible to prevent each and every death in custody and detention. Members will know that there have been a number of deaths in the past few months. Most recently, last week, Patrick Gerald Duffy died in his cell in Maghaberry Prison. There were no signs of suspicious circumstances. Nevertheless, I think that it would be appropriate, Chairman, that I express our deepest sympathy, on behalf of the Department, to Mr Duffy's friends and family on the loss of their loved one.

We cannot guarantee that, one day, a prosecution for a death in custody will not succeed. However, we are not complacent. The establishment of the new offence has already caused organisations to focus even more closely on their systems, procedures, facilities and training. They are much better prepared now than they were three years ago to prevent deaths in custody and detention. That is also the position in Great Britain, where the Ministry of Justice is the lead Department. Great Britain's commencement Order for the custody and detention provisions has been laid in Parliament for debate and approval. It specifies 1 September 2011 as the intended start date in England, Wales and Scotland.

There is no overriding legal consideration why commencement in Great Britain and Northern Ireland should occur on the same date. However, as with health and safety law, we would not wish the legal protections that are available in Northern Ireland under the Corporate Manslaughter and Corporate Homicide Act 2007 to be less than they are in Great Britain.

With moves under way to commence the provisions in Great Britain, and given the readiness of our custody providers for commencement, the Minister believes that now may be the right time to bring that element of the offence into operation. He looks forward to seeing the views of the Committee before he decides whether to proceed and, if so, in what timescale. Were we to move now, hoops would have to be gone through to implement the commencement Order. Our aim is to complete those so that the provisions would come into effect as soon as possible after commencement in Great Britain, sometime in early autumn.

Members will note that, unusually for a commencement Order, this Order cannot be made until the Assembly approves it in draft. Therefore, subject to the Committee's views, and with the Executive's agreement, we will present the Committee with a draft of the Order before it is debated by the Assembly. We believe that commencing those provisions of the Act would be only a part, but an important part, of our efforts to prevent deaths in custody. We welcome comments from the Committee.

The Chairperson:

I have just one question. Had those Orders been in place in the past year, would any of the deaths in custody have resulted in a corporate manslaughter charge?

Mr Johnston:

That is very difficult to answer because decisions in such matters are in hands that are not the Department's. It is important to emphasise that a prosecution would have to show that, but for the failures of management, the person would not have died. The main focus is on senior management and on those who play significant roles in managing or decision-making, and it is about a gross breach in which the conduct falls far below what can be reasonably expected of the organisation in the circumstances. The legislation sets that bar.

The Chairperson:

I appreciate that. I ask because the Committee has to be content about this. On the one hand, the provisions will help to ensure that systems are in place to prevent such deaths. However, on the other hand, do we want to open up the Prison Service to corporate manslaughter charges? A concern that that could happen has been raised with me. Members may disagree about whether that is a good or a bad thing, but it is a concern that has been raised with me. I would have thought that there would have been some analysis of how the legislation would operate and of

whether past deaths in custody would have resulted in corporate manslaughter charges. I say that just so that members know exactly what they are proceeding with.

Mr Johnston:

The legislation applies to the Prison Service as an employer, just as it applies to all employers and to all other corporate bodies. The exception has been around those in custody or detention. If we are seen to be delaying this, the concern would be why there is a different standard for people in custody or in another setting compared with the standard for employees or others with whom corporations come into contact. We are concerned that, if we let this slip, there could be justified criticisms of why we are applying a different standard, particularly from that which is applied to detention in England and Wales.

Ms J McCann:

I was going to ask that question. Obviously, all employers have a duty of care to the people they employ, for instance, to a worker who is hurt or killed on a building site because of safety issues. I am glad to see that the provision will be extended to people who oversee the care of others in institutions of any type. They have a duty of care. I just want to make the point that I am glad to see these provisions being brought forward.

Mr Johnston:

It is worth emphasising that, as well as applying to the Prison Service, the provisions will apply to police cells; to cells in courthouses; to young people who are detained at the Lakewood Centre, not as part of the criminal justice system but as part of the health system; and to those who are detained in psychiatric hospitals.

Ms J McCann:

If there is negligence.

Mr B McCrea:

Surely the Department will have had some review of some of the difficulties with deaths in custody and whether there may be implications for corporate manslaughter.

Mr Max Murray (Northern Ireland Prison Service):

Part of the action planning process that we in the Prison Service have been working on in the

lead-up to this matter involves identifying the areas at risk, doing a risk-assessment analysis against those areas and looking at what systems and procedures are in place to prevent deaths in custody.

There is no doubt that deaths in custody are a reality and a fact. We know that from recent weeks. We also know it is a fact in other jurisdictions, with 58 deaths in England and Wales alone last year. I understand that, even this week, there are discussions about deaths in hospitals. So, yes, there is that concern. We are as well placed as we are going to be to have this corporate manslaughter provision introduced and implemented. If we are negligent and warrant prosecution because the bar is so high, that is the appropriate action in those circumstances.

Our vulnerability comes from some of the major changes that we are about to introduce in the strategic efficiency and effectiveness (SEE) programme, which the Committee was briefed on the other day. We are going to have a period of significant change. There is going to be upheaval and turmoil, with people exiting. We still deal with a wide range of very vulnerable individuals. We still rely on staff on the ground managing the systems and procedures and on managers managing and supervising. However, I can say that we have appropriate procedures, systems and work practices. We have standard operating procedures. Even at the moment, we are carrying out a standards audit of all our procedures across the three sites. I am not sure what more we can do as a management team.

Mr B McCrea:

The issue, though, is that there have been a number of critical reports, some of which restate what happened in a different case. I know that people take steps to try to learn from mistakes. However, you have a recurrent problem, which you are having some difficulty in dealing with. You just need to be pretty clear, Max, about what the Chair said. If we pass this Order and there is a repeated failure of management to deal with issues such as people sleeping on duty or not taking care of people who are at high risk, that will lead pretty closely to responsibility being with those in senior command positions.

Mr Murray:

I understand that, but when mistakes or negligence are uncovered, there is a responsibility to scrutinise management and what it did when an issue became known. We would be quite proactive and very determined to put right matters that are identified as being wrong. If that then

leads to a corporate manslaughter issue over a future death in custody, we have to defend the actions and what we did at that time. I do not know what else we can do in those circumstances, because we could never, ever be in a situation where we could guarantee that we would not have deaths in custody in the prison setting.

Mr B McCrea:

No, but having repeat occurrences of a similar nature indicates a problem. Although deaths in custody will happen, you have to learn to move on. Anyway, you are aware.

Mr Murray:

That is partly what the SEE programme is about addressing. It is about refocusing the organisation, improved management, accountability and systems. It is about new management structures and an improved focus on the role of prison officers. So, the SEE programme is intended to address a lot of the issues around how the business is managed, particularly at the coalface.

Mr S Anderson:

Following on from your question, Chairperson, and Basil McCrea's, will this Order encourage better health and safety conditions and better procedures in the establishment than exist at present? Surely that would be an encouragement to bring those matters forward, especially, as the Chairperson said, in the light of some of the deaths that have occurred. It would be in the best interest of the Prison Service and, indeed, other organisations, to do things like that.

Mr Murray:

I would not disagree. It will put a bigger responsibility and onus on the Prison Service to up its game plan for managing individuals in custody. That is not to say that we do not have a lot of good staff doing a lot of good work at present.

Mr S Anderson:

It would be an encouragement. It would need to be done.

Mr Johnston:

Over the past three years all the custody providers have focused on addressing those issues.

The Chairperson:

OK. Thank you very much.

OK, members. You have heard what the proposal contains. I seek members' agreement that we refer this proposal to the Committee for Health, Social Services and Public Safety for its views, given the implications for the Department of Health, Social Services and Public Safety. Are members generally content with the proposal? Perhaps you want to wait for that outcome. When we return from recess we will have an opportunity to say yea or nay to the proposal, having waited for the Health Committee's considerations. We can proceed on that basis.

Mr Weir:

It makes sense to get the Health Committee's views. The death of people in care has implications for the Health Department. I cannot think of any other Department for which there are similar potential implications. I hope that our schools system is robust enough that we do not have people dying in the care of our schools, for instance. In a general sense, if there are any circumstances that indicate that any other Departments should, at least, be notified, we should leave it open so that they are notified. My guess is that the Health Committee will indicate strong support for the proposal, but it is prudent, given the timing, to send it to them.

The Chairperson:

OK. We will do that.