HOME OFFICE

CORPORATE MANSLAUGHTER:
THE GOVERNMENT'S DRAFT BILL FOR REFORM

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

(APIL08/05)

JUNE 2005

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally;
- To promote health and safety.

APIL's executive committee would like to acknowledge the assistance of the Health and Safety Policy Working Group in preparing this response:

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CORPRORATE MANSLAUGHTER:
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Executive Summary

- APIL believes that the draft Corporate Manslaughter bill is unworkable in its current form and needs substantial redrafting. We are particularly concerned about the following areas:

- *the bill is intended to be applicable to companies only, yet still refers to 'senior managers' within its definitions;*

- *there appears to be a certain amount of confusion concerning which organisations are to be exempt under the new bill;*

- *it appears that senior management which can demonstrate a lack of action regarding health and safety issues will have a valid defence;*

- *the use of ill-defined terminology such as 'falling far below' means that it will potentially be more difficult to actually gain a successful conviction for the new offence;*

- *there is an uneasy mix of common law tests being applied to a statutory breach of health and safety legislation;*

- *the restrictive nature of to whom a relevant duty of care applies;*

- *exactly what constitutes a 'gross breach'. For example, it appears to only apply to a health and safety violation rather than a simple breach of the duty of care; such a definition is too restrictive.*

- APIL proposes that the Companies Act should be amended so as to enshrine directors' responsibilities in terms of health and safety in statute, with an individual director nominated to deal with this issue.

Ultimately APIL hopes this will allow more guilty directors to be identified and sanctions - both criminal and civil - brought against them.

- In terms of civil sanctions, APIL suggests that the courts should disqualify directors more readily. While this power already exists in the Company Directors Disqualification Act[1], APIL believes there is a need for the court to have additional powers.

[1] 1986 (c.46)

Introduction

1. APIL welcomes the opportunity to put forward its comments on the Home Office's consultation on the Government's draft Corporate Manslaughter Bill. APIL believes, however, that while the intention to legislate on this matter should be applauded, the bill itself, in its current form, is unworkable and needs to be re-drafted in its entirety. APIL's concerns about the bill are detailed in the *'Analysis of draft Corporate Manslaughter Bill'* section below (paragraphs 8 -24).

Directors' Duties

2. While APIL is aware that the draft Corporate Manslaughter Bill specifically removes the possibility of proceeding against individual directors for the offence of corporate manslaughter, we firmly believe it is imperative that company directors take responsibility for their company's health and safety practices. Due to the fact that the draft bill is criminal in nature and is only applicable in relation to a specific criminal act – the death of a person, or persons, who are owed a relevant duty of care – we believe that it is more appropriate to tackle the issue of directors' individual liability via changes to the civil law. This will allow all types of health and safety compromise, regardless of whether it results in a death, to be fully considered.

3. APIL believes that the Companies Act[2] should be reformed to enshrine directors' health and safety responsibilities in law, in order for deaths and injuries at work to be prevented. To this end we fully support the Transport and General Workers Union's (T&G) suggested amendments to section 282 and 309 of the Companies Act concerning the need for a company to nominate one of its directors as a health and safety director, and that this health and safety director's name should be set out in the

[2] 1985 (c.6)

company's annual return[3]. One of the greatest difficulties with corporate manslaughter prosecutions under the current regime is that in order for a company to be convicted, someone must be *"identified as the embodiment of the company itself[4]"* and convicted of manslaughter. This principle is widely known as the identification doctrine, and stipulates that a 'directing mind' must be identified in order for a company to be guilty of corporate manslaughter. The difficulty in identifying this 'directing mind' is that companies, particularly large companies, have labyrinthine management structures. By having a dedicated health and safety director, with specified legislative duties, it will be easier to identify who the 'directing mind' is behind any health and safety breach and be able to successfully prosecute the company for the breach. In addition, the ability to accurately identify this 'directing mind' will hopefully lead to more prosecutions for all types of health and safety offences, including criminal charges where the breach has been particularly severe.

4. APIL also believes it is essential that health and safety management becomes as much a management priority as financial management. Indeed the Financial Services Authority (FSA) recently stated that compliance with regulations, including health and safety regulations, should take place at a board room level:

   "We are making it absolutely clear to firms that we expect them to think about regulation at board level. In the past companies have regarded compliance as something boring to give to some compliance officer down the corridor. We are saying very clearly to senior people in firms that dealing with the regulatory system sensibly and thinking about regulatory standards is something that we expect boards to do"[5].

[3] See Appendix A for a copy of the suggested Health and Safety (Directors Duties) Bill and Explanatory Notes. (A copy can also be downloaded at: http://www.corporateaccountability.org/press_releases/2003/17Jun.htm)
[4] *R v HM Coroner for East Kent, ex p Spooner* (1989) 88 Cr App R 10, 16, *per* Bingham LJ
[5] DLA Piper Rudnick Gray Cary LLP – *'UK Regulatory Awareness Survey'* – page 7

Sanctions against directors

5. APIL believes that in order for health and safety to be made a boardroom priority, there need to be stiffer sanctions against directors. The need for more stringent sanctions is due to the perceived failure of company directors to take compliance with regulations – of all types – sufficiently seriously. For example, a former chief executive of a FTSE 100 company stated that "[a]*lthough I signed the papers to be a director, I had no clue when I signed them what that meant and where I might end up as a result. I was completely ignorant of my obligations. Management has a cavalier attitude to regulation and assumed in some way that it didn't really apply to them"*[6].

6. APIL therefore recommends that the court should make greater use of its powers to disqualify a director if he is found to have contributed to a health and safety breach which resulted in a death or serious injury. Indeed the director of the Office of Fair Trading (OFT) recently stated that although fines are an effective sanction, the *"sanction that attracts the most attention of directors is director disqualification. The threat of being disqualified seems to strike a large number of senior managers and directors"*[7]. While the Company Directors Disqualification Act[8] allows for the disqualification of a director who is convicted of an "indictable offence" - including a breach of health and safety legislation - this sanction is rarely used. APIL proposes that the Company Directors Disqualification Act could be made more effective by the adoption of the aforementioned proposal to enshrine boardroom responsibility for health and safety in legislation. This would allow the appropriate identification, and disqualification, of directors who have failed in their health and safety duties.

7. APIL also suggests that the courts should be given additional powers to disqualify directors who are shown to have failed in their health and

[6] DLA Piper Rudnick Gray Cary LLP – *'UK Regulatory Awareness Survey'* – page 9
[7] DLA Piper Rudnick Gray Cary LLP – *'UK Regulatory Awareness Survey'* – page 10

safety responsibilities. While such a power would be inappropriate within the new Corporate Manslaughter Bill itself – due to the fact that director disqualification would seem to be a civil concern rather than a criminal matter – we believe that such a power could be introduced alongside it. This would allow the court to consider possible sanctions against individual directors based on evidence arising out of a corporate manslaughter offence, irrespective of whether a guilty verdict was eventually delivered.

Analysis of draft Corporate Manslaughter Bill

Section 1 - The offence

8. APIL notes that there appears to be a discrepancy between the stated intention of the bill and the actual definition of the offence contained within the bill. The consultation preamble to the bill states, quite categorically, that "[a]*s a corporate offence tackling the specific problem of holding organisations to account, the offence will not apply to individual directors or others*" (emphasis added). This position is, in turn, reflective of the general approach recommended by the Law Commission in its 1996 report, namely that *"liability should lie in the system of work adopted by the organisation for conducting a particular activity"*[9] not on individual culpability. Yet the draft bill – at section 1 (1) – specifies that an organisation will be guilty of the offence of corporate manslaughter if the way in which any of the *"organisation's activities are managed or organised by its senior managers"* causes a person's death or leads to a breach of its duty of care. The mention of the senior managers rather than senior manage*ment* seems to contradict the preamble's stated intention that it is not concerned with individuals, as well as the Law Commission's recommendation that the bill should be directed at the system of work.

[8] 1986 (c.46)
[9] Consultation document – page 34 – paragraph 8

9. If the current wording was to be retained, APIL envisages that in attempting to prosecute companies for corporate manslaughter the difficulties with the identification doctrine would resurface, and negligent companies and directors would escape punishment through technical defences. The re-introduction of the need to identify the 'directing mind' would defeat the original intention of the bill - namely to make it easier to attribute to an organisation *"failures in the way its activities are organised or managed at a senior level"*[10]. APIL therefore suggests that section 1 (1) should be re-drafted to reflect the organisational focus of the offence, rather than its current drafting, which focuses on individuals. For example, instead of reference to 'senior managers' the term 'senior management' could be used in its place. Alternatively all mention of senior managers, or senior management, could be removed from the bill, so that section 1 (1) reads:

   "An organisation to which this section applies is guilty of the offence of corporate manslaughter if the way in which any of the organisation's activities are managed or organised –
   (a) causes a person's death, and
   (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased."

10. APIL considers that the use of this above definition will add clarity concerning exactly to whom the offence applies, as it removes ill-defined terminology such as 'senior manager'. While this definition is very wide in respect of to whom it applies, as long as a defendant organisation can positively demonstrate that appropriate measures were put in place to avoid a health and safety breach, it is unlikely it will be found guilty. For example, if an errant or rogue employee chose to ignore health and safety edicts from the management of a company, and the company concerned could demonstrate that it was not through its lack of systems that the death occurred, the company would not be guilty of the offence. In contrast, however, companies which have poor risk assessment and

[10] Consultation document – page 6 – paragraph 3

fail adequately to address health and safety concerns would be covered under the remit of the bill.

11. APIL is concerned that the definition of the offence contained with section 1 (1) fails to appreciate instances where 'senior managers' do not 'manage' or 'organise' activities, which eventually leads to a death. For example, a 'senior manager' who does not in any way manage or organise the appropriate health and safety precautions for his employees may be exempt in respect of the offence as currently drafted because misfeasance is covered but nonfeasance is not. We suggest that this definition is re-drafted in order to take account of omissions, as well as actions.

12. APIL believes that one of the primary flaws with the current draft bill is that it fails adequately to detail the types of organisations which are covered by the offence and those which are exempt. Section 1 (2) (b) states that the offence of corporate manslaughter applies to *"a government department or other body listed in the Schedule"*. With reference to the schedule, however, while the majority of Government departments are included, there appear to be some notable exceptions. For example, while the list includes the Department of Health, no mention is made of the National Health Service (NHS).

13. Furthermore, section 4 (1) – concerning the relevant duty of care for the offence – states that no duty of care is owed by an organisation *"in the exercise of an exclusively public function"*. In terms of what this section specifically applies to, section 4 (4) continues by detailing what is included within an *"exclusively public function"*. It is defined as a function which falls under the prerogative of the Crown or is *"exercisable only with authority conferred – (b) by or under an enactment"*. APIL believes that this would lead to the exemption of any body which has been enacted under statute – namely statutory bodies such as the NHS and local authorities. Conversely, section 7 within the bill - again with reference to the schedule - then states that "[a]*n organisation that is a servant or*

agent of the Crown is not immune from prosecution under this Act", yet the bill exempts the armed forces within section 10. In order to make any new offence work, corporate manslaughter included, it is vital that the organisations which are exempt from its application are clearly stated and defined. APIL suggests that the ill-defined, and confusing, nature of the exempted organisations in the draft bill will ultimately result in considerable time and money being wasted in protracted legal discussions to establish if an organisation is covered. Consequently, this legal uncertainty will lead to fewer successful cases, leaving guilty parties unpunished. In addition, if the bill does offer exemptions to public services, this will again be contrary to its objectives, as it will be seen to be condemning systemic failures within the private sector but excusing similar public sector failures.

Section 2 – Senior manager

14. APIL believes – as previously mentioned - that the draft bill's use of the term 'senior manager' undermines the Government's assertion that it is directed towards companies rather than individuals. Furthermore, by concentrating on senior managers, APIL believes the bill is looking at the vicarious liability of organisations attracting criminal criticism rather than the personal responsibility of a corporation in avoiding deaths and in managing health and safety. Within the current drafting of the bill individual managers will still have to be identified, as with the previous need to identify a 'directing mind'. If, however, the bill were to focus on senior management, consideration would be given to the structure and systems of an organisation, rather than its individual members. Therefore APIL suggests that a more appropriate wording for section 2 would be:

"Senior management of an organisation is the person or group of persons who play a significant role in –
(a) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or

(b) the actual managing or organising of the whole or a substantial part of those activities."

15. APIL is further concerned that the bill defines senior managers in terms of the activities which they perform, namely those who play a *"significant role"* in *"the making of decisions"* and the *"actual managing or organising"* of activities within the organisation. What this definition fails to address is the situation where a manager may have certain responsibilities, for example in relation to health and safety, yet fails either to make decisions or manage or organise these activities. Under the current definition, due to his lack of activity, the manager described above would not be considered 'senior' for the purposes of the offence. Consequently, his *lack* of actions, regardless of whether they led to a death, would not be considered relevant within the remit of the bill. APIL believes that a lack of activity in ensuring health and safety within the workplace should not be a cause for the corporate manslaughter charge to fail. We propose that the following amendment should be added to section 2 in order to prevent managers who do nothing escaping the scope of the offence:

"'*Senior management' of an organisation is the person or group of persons who play, <u>or ought to have played,</u> a significant role in –*
(a) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
(b) the actual managing or organising of the whole or a substantial part of those activities." (Amendment highlighted)

Section 3 – Gross breach

16. While APIL accepts that the use of terminology *"falling far below"* in section 3 (1) has been adopted directly from the Law Commission's recommendations, we believe that it is still too ill-defined and will inevitably add another layer of uncertainty to the offence. The more uncertainty present in the definition of the offence, the less likely the Crown Prosecution Service (CPS) is to pursue a corporate manslaughter

charge and the less likely a court is to convict an organisation of the offence charged. Indeed APIL's reservations echo those of the Law Commission itself concerning the use of 'falling far below' to define 'gross breach' as it *"would still leave a large degree of judgement to the jury, and this might lead to inconsistent verdicts being entered in different cases based on similar facts"*[11]. APIL believes a more appropriate definition to be used in the circumstances is that of the criminal offence of involuntary manslaughter. 'Gross' under this definition means that *"the defendant's conduct was so bad, that all of the circumstances amount to a criminal act or omission"*[12]. Although this definition appears to offer little detail, it should be remembered that it has been used within criminal law for many years and has a specific legal meaning, defined through precedent, which the criminal courts understand.

17. APIL is concerned that the conditions which indicate 'gross breach' for the purposes of the bill fail to consider non-health and safety reasons. For example, a management failure may have lead to the death of a worker, but due to the fact that this failure was not contrary to the current health and safety legislation, it would not be considered a 'gross breach of the relevant duty of care' under the draft bill. In order to address this issue, APIL proposes that section 3 (2) should be re-drafted so as to remove the current stipulation that health and safety legislation must be contravened before a breach can be considered 'gross'. Instead a breach of health and safety should be one of the circumstances to be considered when a jury is deciding whether a breach of the relevant duty of care was 'gross' or not. For instance, section 33 (3) of the Limitation Act states that "[i]*n acting under this section the court shall have regard to all circumstances of the case",* and then it continues by listing particular items to be considered. Using this example, a re-drafted section 3 (2) would state:

[11] Page 52 - Paragraph 5.32
[12] Archbold: Criminal Pleading, Evidence and Practice 2005

"In considering what is 'gross breach', the court shall have regard to all circumstances of the case in particular to –

a) the failure of the organisation to comply with any relevant health and safety legislation or guidance;

b) etc.

.

18. In addition, APIL believes that the assessment of 'gross breach' in section 3 (2) (a) (iii) in terms of whether the organisation *"sought to cause the organisation to profit from that failure"* is irrelevant to culpability and is only relevant to punishment. We can see no reason why it should matter whether the offence was caused deliberately or whether by pure incompetence, because the result is the same – the avoidable death. For example, in a murder trial the guilt of the offender is not dependent on whether he happened to kill for money or not. Admittedly the issue of profit is important, but it is more suitable for consideration in sentencing than in the actual definition of the offence itself.

Section 4 – Relevant duty of care

19. APIL believes that the relevant duty of care as specified within section 4 (1) of the draft bill is too narrow, and will inevitably lead to some negligent deaths being exempted from the scope of the proposals. In particular, we are concerned that the duty of care is only applicable to the categories of person specified in section 4 (1) (a) to (c). APIL believes that a company should owe a general duty of care to anyone who it negligently kills, regardless of whether they are in one of the specified groups detailed in the bill. Indeed the suggested categories mean that only negligent deaths to employees, visitors and those who provide goods and services for profit will actually be covered. For example, if a train came off the tracks and killed a person walking his dog, he wouldn't be covered under the current proposals as he does not fit into one of the specified categories, so that no duty of care is owed to him. APIL considers such a situation unfair and unjust. In fact we consider the

attempt to indicate the exact category of person to which a 'relevant duty of care' is owed as unduly restricting the application of the bill.

20. Furthermore, APIL suggests that by restricting section 4 to specific categories of claimants, the draft bill is incorrectly applying the common law duty of care. Traditionally a duty of care in common law negligence arises when three conditions are met: there must be sufficient proximity between the parties; it must be just fair and reasonable to impose a duty of care; and injury to the claimant must be reasonably foreseeable[13]. For example, an employer of workmen *"clearly satisfies the proximity test and the just, fair and reasonable test so far as his employees are concerned"*[14]. The issue is therefore whether the injury was foreseeable. The duty of care within the draft bill, however, is not restricted by reference to whether the death was foreseeable or not, but by reference to the category of the victim. This appears to be contrary to the correct operation of the 'duty of care' principle, and APIL questions its use within the draft bill.

21. In relation to the use of the 'duty of care' concept within the bill, APIL is concerned about the presence of such common law duties within a statutory framework. For example, according to the draft bill - at clause 3 (2) - a 'gross breach' for the purposes of being guilty of corporate manslaughter relates only to the failure to comply with health and safety legislation. Yet before a company can be convicted of the offence, the company must owe the dead person a duty of care under the common law. The difficulty lies in the fact that there does not have to be common law negligence in order for a company to breach health and safety legislation. Indeed health and safety legislation is based on set statutory standards which are punishable when breached, regardless of whether there was negligence involved or not. Inevitably, APIL suggests, the presence of common law notions within a legislative framework – one which specifies that the offence can only be committed by a death

[13] See *Caparo Industries plc v. Dickman* [1990] 2 A.C. 605
[14] Personal Injury Handbook - Page 3 – Paragraph 1-02

resulting from a statutory breach – will lead to confusion, especially for a lay jury. This uncertainty will lead to fewer cases being successfully brought against companies for this offence.

22. APIL suggests that the terminology used within section 4 (1) is inconsistent and confusing. While subsection (a) refers to 'employees' in terms of the organisation's capacity as an employer, in order for there to be consistency, subsection (b) – when talking about the employer's duties as a land occupier – should make reference to 'visitors and neighbouring owners'. Instead the organisation is referred to in terms of its *"capacity as occupier of land"*. The same lack of clarity is evident in sub-section (c) where, rather than specifying 'in connection with - a user of services or customers', the bill makes reference to:

    (i) the supply by the organisation of goods or services (whether for consideration or not), or
    (ii) the carrying on by the organisation of any other activity on a commercial basis

    As previously mentioned, any lack of clarity or definition within the bill will lead to disagreements in court allowing potentially guilty defendants to avoid punishment.

23. APIL is disappointed to note that the explanatory text preceding the bill suggests that the exemption relating to *"exclusively public functions"* at the end of section 4 (1) will potentially include deaths of prisoners in custody. If this is the case we would be greatly disappointed, as we have campaigned vigorously – as part of the Government's ongoing coroners review - for prisoners to be brought within the same civil accountability system as any other death which has occurred negligently. APIL sees no reason why public authorities should not be brought to account when a prisoner dies in their care. Therefore any attempt to exempt such cases should be removed from any re-drafted bill.

24. A further complication in relation to prisoners in custody – which is also relevant to many of the UK's other public services – is that more and more prisons are being run by private companies. APIL's concern is that while Government institutions may be included under the "exclusively public function" clause of the bill, private prisons may be exempt. This will create a two-tier system of enforcement, where liability for exactly the same offence will be different dependent on the status of that organisation. APIL proposes, in order for corporate manslaughter to be considered with the appropriate gravity across all institutions, all exemptions detailed within the bill should be removed. This will allow a level-playing field for all organisations as they will all be bound by the same duties and potentially the same liabilities and punishments.

Appendix A

Transport and General Workers Union (TGWU) and the Centre for Corporate Accountability (CCA)

Health and Safety (Directors Duties) Imitation Bill and Explanatory Notes

June 2003

SCHEDULE

Schedule 1: Consequential Amendments

The Health and Safety at Work Act 1974 (c. 37)

1 (1) The Health and Safety at Work Act 1974 is amended as follows
(2) in Section 16(1) after "regulations" insert 'or of section 309 A and section 309B of the Companies Act 1984".

Schedule 2

Section 1: Laws relating to health and safety

Column 1	**Column 2**
Title of Statutory Provision	**Reference**
Health and Safety at Work Act 1974	1974 C.37
A list of provisions enforced by the Health and Safety Executive, Local Authorities, Maritime and Coastguard Agency, Civil Aviation Authority and any other provision concerned with health and safety will be added to the final Bill	

Schedule 3

Section 2: Statutory provisions requiring the notification of events

Column 1 **Title of Statutory Provision**	**Column 2** **Reference**
The Regulation of Railways Act 1871 and Orders or Regulations made or to be made thereunder.	1871 c. 78.
The Explosives Act 1875.	1875 c. 17.
The Railway Employment (Prevention of Accidents) Act 1900.	1900 c. 27.
The Nuclear Installations Act 1965 and Orders and Regulations made or to be made thereunder.	1965 c. 57.
The Air Navigation (Investigation of Air Accidents involving Civil and Military Aircraft or Installations) Regulations 1986.	S.I. 1986/1953.
The Civil Aviation (Investigation of Air Accidents) Regulations 1989.	S.I. 1989/2062.
The Merchant Shipping (Accident Reporting and Investigation) Regulations 1994.	S.I. 1994/2013.
Reporting of Injuries, Diseases and Dangerous Occurrences and Injuries Regulations 1995.	S.I. 1995/3163.
Any further relevant provisions will be added to the final Bill	

Schedule 4

Section 2: Statutory provisions permitting imposition of notices

Column 1	**Column 2**
Title of Statutory Provision	**Reference**
Health and Safety at Work Act 1974.	1974 C. 37
A list of provisions will be added to the final Bill	

HEALTH AND SAFETY (DIRECTOR DUTIES)

A

BILL

TO

Impose duties upon company directors in relation to health and safety, and to require large companies to appoint a director as the health and safety director.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1 Health and Safety Directors

"(1) In section 282 of the Companies Act 1985 (c.6) (directors) after subsection (3) insert –

(4) A company to which this requirement applies shall appoint one of its directors as the health and safety director for the purposes of section 309A.

(5) The requirement in subsection (4) applies to every company which is not a small or medium-sized company for the purposes of section 247."

(2) In section 364 of the Companies Act 1985 (Contents of Annual Return: General) after subsection (1)(d) insert –

"(da) the name of the health and safety director of the company"

2 Directors' duties regarding health and safety

After section 309 of the Companies Act insert –

"309A Directors' duties regarding health and safety

(1) It is the duty of the directors of a company to take all reasonable steps to ensure that it acts in accordance with the obligations imposed on it by any law relating to health and safety as specified in the first column of schedule 2.

(2) The directors of a company to which section 282(4) applies shall, for the purpose of complying with their duty under subsection (1), take account of any information and advice provided to them by the health and safety director.

(3) The directors of a company to which section 282(4) applies shall make adequate arrangements to ensure that the health and safety director is provided with such information as he may require to carry out his duties under section 309B.

309B Duties of health and safety directors

(1) It shall be the duty of the health and safety director appointed under section 282 (4) to take all reasonable steps –

(a) to inform the other directors not less than four times a year, of –

(i) how the company's activities are affecting the health and safety of its employees and other persons not in the company's employment;

(ii) the adequacy of the measures taken by the company to ensure that it complies with any law relating to health and safety and any further measures that may be necessary for this purpose.

(b) to inform other directors promptly on –

(i) any significant health and safety failure by the company and the steps that have been taken, or will be necessary, to rectify it;

(ii) details of any deaths, injuries or other incidents that the company has a duty to report under any of the relevant statutory provisions specified in the first column of schedule 3;

(iii) details of any notice which has been served on the company or on one of its employees under any of the relevant statutory provisions specified in the first column of schedule 4;

(iv) details of any proceedings which have been brought against the company for an offence under any law relating to health and safety or for any offence arising out of a death.

(c) to inform the board on the health and safety implications of its decisions.

(2) The duties of the health and safety director set out in subsection (1) shall not affect in any way –

(a) the duties which the board has given to other directors with respect to health and safety matters;

(b) the duties of directors regarding health and safety matters imposed under this Act.

309C All Reasonable Steps

(1) In determining those steps that should be taken by directors to comply with the requirements of sections 309 A and B consideration shall be given to any code of practice issued or approved by the Health and Safety Commission contained under Section 16 of the Health and Safety at Work Act 1974.

3 Application of Schedules

(1) The enactments mentioned in the Schedule to this Act are amended in accordance with that Schedule;

4. Commencement and saving

(1) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

HEALTH AND SAFETY (DIRECTOR DUTIES)

EXPLANATORY MEMORANDUM

This Bill needs to be read alongside the document "A Hard Day's Work Never Killed Anyone – Negligent Bosses Did" published by the T&G

Introduction

1. These explanatory notes relate to the Health and Safety (Directors Duties) Bill. They have been prepared in order to assist the reader of the Bill. They do not form part of the Bill.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be a comprehensive description of the Bill.

Summary

3. The purpose of this Bill is to impose an obligation upon all company directors to take all reasonable steps to ensure that their company is complying with health and safety law.

4. It also imposes an obligation upon large companies to appoint a director with responsibility for health and safety, to ensure that the company has the procedures that will allow this director to undertake his duties and to make adequate arrangements within the company so that the health and safety director can carry out his duties.

5. The Bill states that this health and safety director has a duty to take all reasonable steps to obtain safety information concerning the company and to pass this information to the board.

6. The Bill also imposes an obligations upon the directors to take account of any information and advice provided to them by the health and safety director.

Background

7. The Government, in its strategy document, Revitalising Health and Safety, published in June 2000 set out the importance of the conduct of directors to the health and safety of companies, and stated that its was the intention of ministers to introduce

legislation on directors responsibilities when parliamentary time allows. This bill is intended to comply with that intention.

8. This legislation is required as existing law imposes no positive duty upon company directors to take any steps to ensure that their company is complying with health and safety law.

Section One

9. Section 1(1) amends section 282 of the Companies Act 1985 and inserts an additional duty upon those companies which are neither small nor medium as defined by section 247 of the Companies Act to nominate one of its directors as a 'health and safety director'.

10. Section 1(2) amends section 364 of the Companies Act so that the name of this director is set out in the company's annual return.

Section Two

11. Section 2 amends section 309 of the Companies Act 1985 and adds three new sections.

12. The new section 309A imposes a duty upon directors of all companies to take all reasonable steps to ensure that their company is complying with health and safety law. The applicable law is set out in schedule 2.

13. It also imposes a duty upon the directors of those companies which have a duty to nominate a health and safety director to take in to account the information and advice of this nominated director when assessing what steps to comply with the duty that is imposed upon them. It imposes a further duty upon these directors to make adequate arrangements within the company so that this nominated director can obtain the necessary information.

14. Section 1 of the new section 309B sets out the duties of the nominated health and safety director. These are divided into three parts. Section (1) (a) requires them to inform the other directors "not less than four times a year", of;
    - how the company's activities are affecting the health and safety of its employees and other persons not in the company's employment;
    - the adequacy of the measures taken by the company to ensure that it complies with health and safety legislation and any further measures that may be necessary for this purpose.

15. Section (1) (b) requires the nominated director to inform other directors 'promptly' in relation to:
    - any significant health and safety failure by the company and the steps that have been taken, or will be necessary, to rectify it;
    - details of reportable incidents, enforcement notices and decision to prosecute the company.

16. Section (1) (c) requires them to inform the board on the health and safety implications of its decisions.

17. Section 2 of section 309 B states that the duties of the health and safety director do

not diminish any other health and safety duty imposed on other directors under this act, and any other duties imposed by the Board.

18. The new section 309 C states that in determining what steps need to be taken by directors to meet the requirements of the duties imposed upon them, they should give consideration to any code of practice issued or approved by the Health and Safety Commission.

Schedule 1

18. Amendment of section 16 of the Health and Safety at Work Act 1974 ensures that the HSC has the power to issue codes of practice in relation to the matters in Part 1 of the Bill.