

Culpable Homicide (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Culpable Homicide (Scotland) Bill introduced to the Scottish Parliament on 1 June 2020.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and Claire Baker MSP, the member who introduced the Bill (SP Bill 75–LC);
- Explanatory Notes (SP Bill 75–EN);
- a Policy Memorandum (SP Bill 75–PM).

3. This Financial Memorandum has been prepared by Claire Baker MSP, the member who introduced the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Background

4. The aim of the Culpable Homicide (Scotland) Bill is to amend the law of culpable homicide to ensure that where loss of life is caused by the recklessness or gross negligence of individuals, companies or organisations that, where provide, the wrongdoer can be convicted of the offence that reflects the appropriate seriousness and moral opprobrium of what occurred.

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5. As current law on culpable homicide stands, it is necessary to identify the controlling mind of an organisation to successfully prosecute. While this is possible in smaller organisations it is practically very difficult to do so in larger organisations with layers of management. This means current law is not able to be applied to all sizes of organisation in the same way. The Bill seeks to remedy this by ensuring the law can be applied to all sizes of organisation and company as it is to individuals.

6. The Bill will amend the law of culpable homicide by making it clear in statute: that a person may be guilty of culpable homicide if that person causes the death of another recklessly or by gross negligence; what the elements are of each of those offences; how an organisation may be liable for each of those offences; and that a Crown servant or agent may also be liable for each of those offences.

7. These offences are in addition to, and not in substitution for, existing kinds of offence of culpable homicide at common law.

8. The Bill will introduce an individual offence tied to the offences and organisation may commit. Where an organisation's office holders, individually or collectively, act in a reckless manner that leads to someone's death, the organisation is guilty of culpable homicide and the individuals whose actions lead to the organisation's guilt can be convicted and sentenced appropriately.

9. Culpable homicide is an extremely serious crime. A conviction for culpable homicide carries a significant stigma intended to reflect the moral opprobrium that society attaches to taking a life. An important aspect of the Bill is to ensure the same moral opprobrium attaches to individuals, groups and organisations who cause death in sufficiently similar circumstances.

10. The Bill will address the inequity in current law regarding its application to organisations of different sizes.

11. With clear statutorily defined limits as to what constitutes culpable homicide, the Bill will provide a deterrent by regulating the behaviour of individuals and organisations in such a way the rate of homicides in Scotland will reduce.

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12. The Bill will drive behaviour change in Scotland by focusing companies on the importance of health and safety in the workplace, make clear their responsibility in ensuring a safe working environment, and make clear the significant consequences when preventable failures occur.

13. Whilst the Bill seeks to drive behavioural change – by improving workplace health and safety – it is not anticipated the Bill would incur significant costs to implement. Some initial costs would be required to publicise the change in law, but the resulting behavioural change is not anticipated to lead to a significant increase in expenditure.

14. A consequence of the Bill will be to encourage safer working environments for all employees by emphasising the importance of adhering to health and safety legislation to companies. While the Bill would introduce significant consequence for employers in the event of an avoidable tragedy, it would also change the behaviour of companies who look to cut corners and minimise their responsibilities, resulting in fewer fatalities.

15. The Bill should not be a burden to employers, as they should be working within health and safety legislation and the Bill should raise standards within companies. It would also address the inequality between small companies, where an individual can be identified and charged with culpable homicide, and all other companies where a ‘controlling mind’ cannot be identified. A consequence of the Bill would be to embed a culture of health and safety adherence in all companies and provide a strong incentive to do so.

General information on costs

16. It is not anticipated that any significant costs will occur as a result of the Bill. The Bill is introducing additional types of offence which can be pursued under the existing law of culpable homicide and as such seeks to improve the current law and address gaps in its application. The Bill is seeking to ensure culpable homicide law is able to be applied equitably across all types of organisation by amending the law so it is more effective in its purpose.

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17. In 2018/19 147 workplace deaths occurred in Great Britain, with 29 worker deaths in Scotland.¹ The purpose of the Bill is to improve existing law on culpable homicide in order to reduce the number of deaths in the workplace, as such it would ultimately save money in terms of reducing the number of prosecutions for avoidable workplace deaths. Reducing the number of avoidable workplace deaths would also result in a reduction in health and safety fines applied to such cases under current law.

18. It is not anticipated that entirely new cases will result from the Bill, rather that some cases which would previously have been considered as breaches of health and safety regulations could instead be considered as culpable homicide offences. The Bill will not therefore increase the number of prosecutions but change the type of offence applicable in some cases.

19. For employers, the Bill does not introduce new requirements, rather it seeks to ensure companies and organisations are complying with existing health and safety regulations. The Bill will drive behaviour change by focusing attention on the importance of workplace health and safety and the consequences of not ensuring safe working conditions. Compliance with health and safety regulations is something companies and organisations are already required to do and budget for, so the Bill itself will not result in additional costs for doing so.

Current costs of workplace accidents and fatalities

20. As the intention of the Bill is to reduce the number of deaths in the workplace, and drive up health and safety standards, there would be an expectation that this would also have a positive impact on the number of injuries at work and the cost of this to the economy. The Health and Safety Executive estimated that in 2017-18 in the UK the total cost of self-reported workplace injuries from current working conditions, combining human and financial cost, was £5.2 billion.² From around 2000, the costs fell by 17% but has remained static since then with no

¹ <https://www.hse.gov.uk/statistics/pdf/fatalinjuries.pdf>

² <https://www.hse.gov.uk/statistics/pdf/cost-to-britain.pdf>

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progress in reducing the costs, which fall heaviest on the individual in terms of their quality of life, and in fatal cases, loss of life.

21. An additional benefit of the Bill would be to reduce all injuries at work, providing both financial and human benefits to individual, employers and Government. For employers the main costs related to workplace injuries arise from productivity costs, which includes occupational and statutory sick pay payments and production disturbance, and Employers Liability Compulsory Insurance premiums. Employer costs also relate to work reorganisation recruitment and induction costs for new staff. State benefits paid and lost tax receipts account for the majority of government costs, with the remainder largely from healthcare costs.³

22. Relating to workplace fatalities, the HSE Cost to Britain Model⁴ gives an average appraisal value estimate for the cost to society of fatal injuries per case as £1,687,000, with a rounded financial cost of £436,700. For non-fatal injuries the average appraisal value estimated total rounded cost to society per case is £8,500 (£30,600 for injuries resulting in 7 days or more absence and £900 for injuries resulting in up to 6 days absence), with a rounded financial cost of £3,100 (£10,400 and £550 respectively). Additional costs for employers occur in terms of insurance and compensation claims, costs for management time in dealing with HSE or local authority investigations and prosecutions and related legal costs as well as any fines levied due to breaches of health and safety regulations. Government costs for investigating work related accidents are borne by HSE and local authorities. In its breakdown of costs by cost bearer for 2017/18, the HSE details costs for employers for HSE or local authority investigation/prosecution and related costs at £59m and fines paid at £69m.⁵

³ <https://www.hse.gov.uk/statistics/pdf/cost-to-britain.pdf>

⁴ <https://www.hse.gov.uk/statistics/pdf/cost-to-britain.pdf>

⁵ <https://www.hse.gov.uk/statistics/pdf/cost-to-britain.pdf>

Costs on the Scottish administration

Costs on Crown Office and Procurator Fiscal Service and Scottish Courts and Tribunal Service

23. It is not anticipated that an increase in court cases will result from the Bill, rather the Bill will see a small number of cases which currently would have proceeded under health and safety legislation pursued as culpable homicide offences. The broader expectation is of a reduction in the total number of cases as a result of improvements to workplace health and safety.

24. Statistics⁶ from HSE and COPFS in Scotland on health and safety enforcement show a yearly average of 558 prosecution cases in Great Britain across the period 2014/15 to 2018/19, with a yearly average of 527 cases resulting in a conviction for at least one offence. The average numbers of enforcement notices issued by local authorities and HSE for the same period are 2,543 and 9,096 respectively.

25. Estimates on the unit expenditure of criminal procedures for 2016-17⁷ state the average court costs per procedure for the High Court of Justiciary as £16,650 and the average prosecution costs per procedure as £67,658. The average court costs per procedure for Sheriff Court solemn are £2,190 with the average prosecution cost per procedure £4,363. The average court costs per procedure for Sheriff Court summary is estimated at £430.

26. If there is a small increase in cases heard this is unlikely to equate to an increase in the overall workload of the courts. The courts routinely deal with a fluctuating volume of cases, and there is some flexibility built into the system to allow for this. It is anticipated that any additional costs could be met from existing resources.

27. As the Bill is not anticipated to result an increase in prosecutions, the expected costs to the justice system of the Bill are minimal. There

⁶ <https://www.hse.gov.uk/statistics/enforcement.htm>

⁷ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

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may be some minimal one-off costs, in relation to training and updating guidance, which can be absorbed by current budgets.

28. As stated, court costs would not expect to be significantly increased as a serious death in the workplace or fatalities caused by the actions of a company delivering a service would be expected to be pursued through the courts process. As an illustrative guide, a case in England in 2017 prosecuted under the Corporate Homicide Act 2007, included two separate prosecutions with fines issued of £400,000 with court costs identified as £21,236; and £660,000 with court costs identified as £53,115.³⁴ While these recent cases may give the impression that the legislation is effective, the number of prosecutions is insignificant to the number of investigations carried out, and few lead to successful convictions. In both the cases referred to above, a related short prison sentence was also conferred. The policy in Scotland against short prison sentences should be noted.

Costs to Scottish Government: Promoting awareness and understanding of the Bill

29. Promoting awareness and understanding of the Bill would ensure that employers and employees across Scotland are made aware of the new legal position and would be a good opportunity to reinforce messages about health and safety in the workplace.

30. It would be for the Scottish Government to decide the terms of an awareness-raising campaign but the member in charge of the Bill, Claire Baker MSP, considers that a short-term targeted campaign is appropriate.

31. The Scottish Government publishes information relating to how much it spends on marketing (or advertising) campaigns. The most recent available figures are for 2018-19.⁹ Information is detailed for 33 separate campaigns, with a total cost of £6,681,066.36, which averages to £202,456.56 per campaign. Whilst it is difficult to compare the figures for each campaign, as there is limited information about what each

⁸ <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/three-companies-convicted-of-corporate-manslaughter-in-a-week>

⁹ <https://www.gov.scot/publications/marketing-spend-2018-2019/>

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involved, there were eleven campaigns with costs over £250,000. Discounting these significant campaigns from the total spend reduces it to an average spend of £97,882.74 per campaign for the remaining 22 campaigns.

32. Any campaign related to changes which result from the Bill would be communicating a single and simple message about the change to current law. It is not anticipated that this campaign would incur significant cost and would be expected to fall below the above indicated figure of £97,882.74.

33. The Scottish Government may prefer to raise awareness of the Bill through other measures such as providing content on websites (including but not limited to the Scottish Government website), sending information to key stakeholders and using other existing channels to provide information to businesses and individuals. Such an approach would result in a reduced cost.

Costs on local authorities, health boards and other public services

Related guidance for local authorities and other public services

34. There may be some costs involved with providing guidance to Police Scotland, local authorities, health boards and other public services relating to the implementation of the Bill. It is not expected that this work would be onerous and it is expected that any associated costs could be absorbed within existing budgets.

Staff training

35. It is recognised that training would need to be provided to ensure all relevant staff are aware of the implications of this legislation. It is expected this could be provided within existing budgets. Again, it is not expected that this work would be onerous and it is expected that any associated costs could be absorbed within existing budgets.

Costs on other bodies, individuals and businesses

Health and Safety Executive

36. There may be additional one-off costs to the Health and Safety Executive in relation to the Bill in terms of updating guidance for businesses and other organisations on their responsibilities and potential consequences of avoidable workplace deaths. These costs would be expected to form part of ongoing costs to the body in terms of keeping guidance up to date.

Businesses

37. There may be some ongoing costs to businesses who improve health and safety standards as a result of the Bill, however the Bill itself is not increasing health and safety requirements rather it will provide an impetus for businesses who may have previously failed to meet standards to improve. Therefore any costs to businesses on this basis are seen as justifiable as they stem from existing health and safety requirements. Such costs would depend on the size of business involved and should fall within ongoing costs related to health and safety and work responsibilities.

38. 147 workers were killed at work in Great Britain in 2018/19, with 29 worker deaths in Scotland. The sectors with the highest numbers of workplace fatalities each year are agriculture, forestry and fishing, while the highest number of fatalities per 100,000 workers are in agriculture, forestry and fishing and waste and recycling.¹⁰ There may be a requirement for additional guidance to be provided to businesses in those sectors in regard to the Bill and related responsibilities for them, which would be published by business associations, legal bodies and umbrella organisations. It is not expected that this would be financially onerous. It is also expected that such sectors would also benefit from the overall reduction in workplace fatalities, and related financial costs, stemming from the Bill.

Related guidance for business and business organisations

39. There may be some costs for businesses organisations and businesses in terms of raising awareness and providing guidance in

¹⁰ <https://www.hse.gov.uk/statistics/pdf/fatalinjuries.pdf>

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