

# CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### ***Section 3: Public policy decisions, exclusively public functions and statutory inspections***

25. **Section 3** makes provision specifically to exclude certain matters from the ambit of the offence. **Section 3(1)** deals with decisions of public policy taken by public authorities. (Public authorities are defined by reference to the Human Rights Act 1998 and include core public bodies such as Government departments and local government bodies, as well as any other body some of whose functions are of a public nature. Courts and tribunals, which are not covered by the new offence, are excluded.) At present, the law of negligence recognises that some decisions taken by public bodies are not justiciable, in other words, are not susceptible to review in the courts. This is because they involve decisions involving competing public priorities or other questions of public policy. This might, for example, include decisions by Primary Care Trusts about the funding of particular treatments. A recent example in which the courts declined to find a duty of care on this basis related to whether the Department of Health owed a duty of care to issue interim advice about the safety of a particular drug. In many circumstances, these sorts of issues will not arise in respect of matters covered by the specified categories of duty within section 2. And basing the offence on the duty of care should mean that the offence would not apply to these sorts of decision in any event. Section 3(1) confirms, however, that deaths alleged to have been caused by such decisions will not come within the scope of the offence.
26. **Section 3(2)** provides for an exemption in respect of intrinsically public functions. In many circumstances, functions of this nature will not be covered by the categories of duty set out in section 2 (see paragraph 22 above). However, it is possible that some such functions will amount to the supply of goods or services or be performed commercially, particularly if performed by the private sector on behalf of the State. In other circumstances, things done in the exercise of such a function will involve the use of equipment or vehicles. Section 3(2) specifically provides that an organisation will not be liable for a breach of any duty of care owed in respect of things done in the exercise of “exclusively public functions”, unless the organisation owes the duty in its capacity as an employer or as an occupier of premises. This test is not confined to Crown or other public bodies but also excludes any organisation (public or otherwise) performing that particular type of function. This does not affect questions of individual liability, and prosecutions for gross negligence manslaughter and other offences will remain possible against individuals performing these functions who are themselves culpable. The management of these functions will continue to be subject to other forms of accountability such as independent investigations, public inquiries and the accountability of Ministers through Parliament.
27. “Exclusively public functions” are defined in **section 3(4)**. The test covers both functions falling within the prerogative of the Crown (for example, where the

*These notes refer to the Corporate Manslaughter and Corporate Homicide Act 2007 (c.19) which received Royal Assent on 26 July 2007*

Government provides services in a civil emergency) and *types* of activity that by their nature require a statutory or prerogative basis, in other words, that cannot be independently performed by private bodies. This looks at the nature of the activity involved. It therefore would not cover an activity simply because it was one that required a licence or took place on a statutory basis. Rather, the *nature* of the activity involved must be one that requires a statutory or prerogative basis, for example licensing drugs or conducting international diplomacy.

28. *Section 3(3)* provides that an organisation will not be liable in respect of any duty of care owed in connection with the carrying out of statutory inspections, unless the organisation owes the duty in its capacity as an employer or as an occupier of premises. This exemption would cover regulatory activities to ensure compliance with statutory standards: for example, inspection activities by the health and safety enforcing authorities. It is unlikely that these bodies would owe duties of care in respect of such activities or that these activities would be performed commercially; nor would the exercise of these functions amount to the supply of services. It is possible, though, that the carrying out of an inspection might involve the use of equipment, so as to bring section 2(1)(c)(iv) into play. This provision makes explicit that the performance of these functions will fall outside the scope of the offence.