

**EXPLANATORY MEMORANDUM TO**  
**The Corporate Manslaughter and Corporate Homicide (2007 Act)**  
**(Commencement) Order (Northern Ireland) 2012**

**Draft SR 2012**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 24(9) and 27(1) and (1A) of the Corporate Manslaughter and Corporate Homicide Act 2007 and is subject to the draft affirmative resolution procedure.

**2. Purpose**

- 2.1. The purpose of this order is to bring into force, on 3 September 2012, section 2(1)(d) of the Corporate Manslaughter and Corporate Homicide Act 2007. That section covers the element of the offence of corporate manslaughter that applies to duties of care owed to persons in custody or detention. This means, in effect, persons being held in prisons, police and court cells, young people being held in the juvenile justice centre and secure accommodation for young people, and patients detained under mental health legislation. It also includes the UK Border Agency's immigration detention facilities in Northern Ireland and the detention facilities of the Ministry of Defence.

**3. Background**

- 3.1. The 2007 Act extends to Great Britain as well as to Northern Ireland. The other elements of the offence were brought into force on 6 April 2008. Under the Act, an organisation is guilty of corporate manslaughter if the way in which its activities are managed or organised (a) causes a person's death, and (b) amounts to a gross breach of a duty of care owed by the organisation to that person. A substantial element of the breach must be by the acts or omissions of the organisation's senior management. On conviction, the organisation faces a fine; it could also be ordered to remedy faults and publicise its guilt and the nature of its punishment.
- 3.2. The Act applies to all corporate bodies and to certain other public bodies that are not incorporated. There is no Crown immunity from prosecution for this offence – an important distinction from the existing common law offence of gross negligence manslaughter, which the new offence of corporate manslaughter replaces.

**4. Consultation**

- 4.1. Public consultation on the policy behind what became the 2007 Act took place in Northern Ireland by way of a consultation document issued in May 2005.

- 4.2. Custody providers have been preparing since 2007 for the commencement of this part of the offence and all have indicated that they are now ready for commencement. The Northern Ireland Office initially, and the Department of Justice latterly, have had detailed consultations on the commencement of the custody provisions with the Department of Health, Social Services and Public Safety, in view of its responsibilities for health care in prisons, for young people in secure accommodation and for detained mental patients. The Minister, Edwin Poots MLA, has confirmed that he is content for the provisions to be commenced.
- 4.3. The Justice Committee is also content that commencement of the provisions should proceed.
- 4.4. The Executive has approved the making of the Order once the Assembly has approved it in draft.

## **5. Equality Impact**

- 5.1. The Act is designed to underpin duties owed under the law of negligence to employees, the public and (as regards the proposed commencement order) those held in custody or detention. Section 75 issues were addressed during the formulation of policy which culminated in the 2007 Act. No adverse differential impacts were identified; the aim is to contribute to the prevention of unnecessary deaths in custody.

## **6. Regulatory Impact**

- 6.1. The custody provisions of the 2007 Act will directly affect only custody and detention providers as described above. They will also touch upon any duties owed to persons in custody or detention by bodies which oversee custody providers or which commission custody or detention services, such as the Department of Justice, the Department of Health Social Services and Public Safety and the Health and Social Care Board.

## **7. Financial Implications**

- 7.1. The 2007 Act does not increase or reduce or change the duties of care owed by organisations towards individuals under negligence law. It aims to affect the behaviour of organisations by linking the offence to gross breaches of those duties of care. However, it will make organisations, including Crown bodies, more accountable for gross breaches of those duties which cause death. Therefore, in line with the objectives of the legislation, organisations engaged in providing custody and detention services have been identifying risks and improving systems and investing in training and facilities.
- 7.2. Custody providers will continue to invest as appropriate and do all they reasonably should to ensure that legal duties owed by them to individuals within their care are properly delivered. It is not possible to say how much of this activity and expense is due to the establishment of the corporate manslaughter offence.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. Departmental Solicitors confirm that the Department's making of the proposed order would not breach any of the terms of section 24 (Community law, Convention rights, etc).

## **9. EU Implications**

- 9.1. Not applicable

## **10. Parity or Replicatory Measure**

- 10.1. The 2007 Act extends throughout the UK. However, the draft commencement order is free-standing for Northern Ireland. The Act's custody and detention provisions are already in operation in England, Wales and Scotland.

## **11. Additional Information**

- 11.1. None