

Culpable Homicide (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by Claire Baker MSP, in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Members Bill introduced by Claire Baker, the Culpable Homicide (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are the responsibility of the Member and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill is comprised of 16 sections.

4. The Bill amends the law in relation to Culpable Homicide. It aims to ensure that a person ("an individual"), business or organisation ("a non-natural person") who causes a death recklessly or through gross negligence can be found guilty of Culpable Homicide. It includes provisions on the statutory description of a non-natural person for the purpose of the Bill and the level of fines that a court may impose on an individual and non-natural person that breaches a remedial order under the bill. The Bill confers powers on the Scottish Ministers to make regulations to:

- add, remove or modify a description of a non-natural person; and
- increase the maximum fine for failing to comply with a remedial order.

5. Generally, the powers conferred by the Bill relate to matters where, due to their nature, a flexible approach is needed. Therefore, they can appropriately be dealt with in subordinate legislation.

This document relates to the Culpable Homicide (Scotland) Bill (SP Bill 75) as introduced in the Scottish Parliament on 1 June 2020

Rationale for subordinate legislation

6. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Member has carefully considered the need to:

- strike the appropriate balance between the importance of the issue and providing sufficient flexibility to respond to changing or unforeseen circumstances;
- make proper use of valuable parliamentary time;
- take account of the likely frequency of amendment; and
- anticipate the unexpected, which might otherwise frustrate the purpose of the provision approved by the Parliament.

Delegated Powers

Section 7(2) – power to add, remove or modify a description of a non-natural person

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

7. The Bill introduces a statutory test for businesses and organisations being found guilty of Culpable Homicide. The businesses and organisations to which the Bill applies are collectively called “non-natural persons” for the purpose of the Bill. The Bill aims to apply widely and to every type of business and organisation. Section 7(1) contains a descriptive list of businesses and organisations to which the term “non-natural person” applies.

8. Section 7(2) gives powers to the Scottish Ministers to add, remove or modify a description of a “non-natural person”.

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Reason for taking power

9. The Member believes that it is of vital importance that the law of Culpable Homicide is able to evolve and develop as businesses and organisations evolve. The description of a “non-natural person” must therefore be flexible. The Member believes that the best way to achieve this balance is by conferring the power to adapt and modify the description of a “non-natural person” to Scottish Ministers by regulations.

Choice of procedure

10. In line with usual practice the Member believes that regulations that amend primary legislation should require the level of parliamentary scrutiny attached to the affirmative procedure.

Section 10(6) – power to increase the maximum fine for failing to comply with a remedial order

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

11. Section 10(1) gives the courts a power to issue a remedial order to an individual or a non-natural person convicted of the offence in section 1(b) (that is culpable homicide by causing death by gross negligence) to take steps to remedy the failure that led to the death. The remedial order will also require any state of affairs resulting from the failure, which represent the more immediate cause of death, to be addressed. For example, where the management failure related to inadequate risk assessment and monitoring procedures, the consequence of this might be inadequate safety precautions, leading to a death. The court would be able to order that both failures be addressed.

12. Section 10(4) provides that an individual who fails to comply with an order under this section is guilty of an offence and liable:

- on conviction on indictment, to a maximum penalty of life imprisonment or a fine (or both);

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- on summary conviction, to a maximum penalty of 12 months imprisonment or a fine of up to £10,000 (or both).

13. Section 10(5) provides that if a non-natural person fails to comply with such an order it is liable for an unlimited fine on indictment and a fine of up to £10,000 on summary conviction.

Section 10(6) gives powers to the Scottish Ministers to increase these fines.

Reason for taking power

14. It is important that the penalties set out in subsections (4)(b) and (5)(b) continue to represent a real deterrent to individual or non-natural persons who may consider not obeying an order. The fines must be future proofed against their worth being eroded by inflation. The easiest way to achieve this objective is by granting the power to the Scottish Ministers to increase the sums. The Bill does not confer upon the Scottish Ministers the power to decrease the sums.

Choice of Procedure

15. In line with usual practice the Member believes that regulations that amend primary legislation should require the level of parliamentary scrutiny attached to the affirmative procedure.

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