

# Culpable Homicide (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:  
Explanatory Notes (SP Bill 75-EN), a Financial Memorandum (SP Bill 75-FM), a Policy  
Memorandum (SP Bill 75-PM) and statements on legislative competence (SP Bill 75-LC).**

# Culpable Homicide (Scotland) Bill

## [AS INTRODUCED]

An Act of the Scottish Parliament to amend the law relating to culpable homicide; and for connected purposes.

### *Culpable homicide*

#### **1 Culpable homicide**

5 Where an individual or non-natural person, whether by act or omission, causes the death of another person—

- (a) recklessly, or
- (b) by gross negligence,

that individual or non-natural person is guilty of the offence of culpable homicide.

#### **10 2 Meaning of causing death recklessly**

(1) An individual is guilty of the offence in section 1(a) if that person is, or ought to be, aware of an obvious and serious risk that acting in a particular manner will bring about the death of another person but nonetheless acts in that manner where no reasonable person would do so.

15 (2) A non-natural person is guilty of the offence in section 1(a) if a responsible person—

- (a) causes the death of another person recklessly, and
- (b) was acting within the scope of the responsible person's employment or on behalf of the non-natural person in doing the acts or omissions constituting the offence or giving rise to liability for the offence.

20 (3) Where the conduct of an individual responsible person does not cause the death of another person recklessly, a non-natural person is guilty of the offence in section 1(a) if the acts or omissions done by a number of different responsible persons at different times, when considered together, amount to causing the death of another person recklessly.

#### **25 3 Meaning of causing death by gross negligence**

(1) An individual is guilty of an offence under section 1(b) if that individual acts in such a way as to amount to a gross breach of a duty of care owed by that individual to another person and that breach causes the death of that other person.

(2) A non-natural person is guilty of an offence under section 1(b) if the non-natural person causes the death of a person in circumstances where the acts or omissions of the non-natural person amount to a gross breach of a duty of care owed by the non-natural person to that person and that breach causes the death of the person.

5 (3) A breach of duty of care by a non-natural person may be regarded as the cause of a person's death despite the immediate cause of death being the act or omission of a natural person.

#### 4 **Duty of care**

10 In section 3, “duty of care” means any duty of care owed by an individual or, as the case may be, a non-natural person whether under the common law or under any enactment.

#### 5 **Gross breach**

15 For the purposes of section 3, a breach of a duty of care owed by an individual or a non-natural person is a gross breach if the failure in question constitutes conduct falling far below what can reasonably be expected of the individual or, as the case may be, the non-natural person in the circumstances.

#### *Art and part*

#### 6 **Art and part**

20 A responsible person is guilty of being art and part of culpable homicide where the responsible person's conduct forms part of the acts constituting the offence under section 1.

#### *Non-natural person and responsible person*

#### 7 **Meaning of “non-natural person”**

- 25 (1) A non-natural person—
- (a) a body corporate, including statutory bodies corporate,
  - (b) a company (whether incorporated in the United Kingdom or elsewhere),
  - (c) a limited liability partnership,
  - (d) any other partnership,
  - (e) an unincorporated association of persons,
  - 30 (f) the Scottish Administration,
  - (g) the Crown Office and Procurator Fiscal Service,
  - (h) any department of the United Kingdom Government.
- (2) The Scottish Ministers may amend subsection (1) by regulations to—
- (a) add a description of a non-natural person, or
  - 35 (b) remove or modify a description of a non-natural person for the time being included in that subsection.

**8 Meaning of “responsible person”**

- 5 (1) An individual is a responsible person for a non-natural person if the individual supervises, manages or organises any people or activities on behalf of the non-natural person, or any part of the non-natural person’s activities, as part of that individual’s actual, ostensible or implied duties for the non-natural person.
- (2) A responsible person may be an employee, contractor, consultant, shareholder, director, partner or have any other relationship with the non-natural person.

*Penalties and remedial orders***9 Penalties**

- 10 (1) An individual who is guilty of an offence under section 1 is liable on conviction on indictment to a maximum penalty of life imprisonment or a fine (or both).
- (2) A non-natural person that is guilty of the offence of culpable homicide under section 1 is liable on conviction on indictment to a fine.
- 15 (3) A responsible person who is guilty of the offence of culpable homicide under section 1 by art and part under section 6 is liable on conviction on indictment to a maximum penalty of life imprisonment or a fine (or both).

**10 Power to order breach to be remedied**

- 20 (1) A court before which an individual or a non-natural person is convicted of the offence under section 1(b) may order that person or it to take specified steps to remedy—
- (a) the breach mentioned in section 3(3),
- (b) any matter that appears to the court to have resulted from that breach and to have been a cause of the death.
- (2) An order under subsection (1) must specify a period within which the steps are to be taken.
- 25 (3) The period so specified may be extended or further extended by order of the court on an application made before the end of that period or extended period.
- (4) An individual who fails to comply with an order under this section is guilty of an offence and liable—
- 30 (a) on conviction on indictment, to a maximum penalty of life imprisonment or a fine (or both),
- (b) on summary conviction, to a maximum penalty of 12 months imprisonment or a fine of up to £10,000 (or both).
- (5) A non-natural person that fails to comply with an order under this section is guilty of an offence and liable—
- 35 (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine of up to £10,000.
- (6) The Scottish Ministers may, by regulations, substitute a higher amount for the amounts specified in subsections (4)(b) and (5)(b).

*The Crown***11 Crown application**

- (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- 5 (2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.
- 10 (4) Anything done, or omitted to be done, purportedly by a servant or agent of the Crown but, in law, by the Crown, is to be treated for the purposes of this Act as done or omitted to be done by that servant or agent.
- (5) A person in employment under or for the purposes of a servant or agent of the Crown but, in law, by the Crown, is to be treated for the purposes of this Act as employed by that servant or agent.
- 15 (6) A servant or agent of the Crown is to be treated for the purposes of this Act as owing whatever duties of care it would owe if they were not such a servant or agent of the Crown.
- (7) In this section, “servant or agent of the Crown” includes—
- 20 (a) an officer of the Crown, such as a Minister of the Crown or the Scottish Ministers,
- (b) a person employed by the Crown, including persons employed by the Scottish Ministers under section 51(1) of the Scotland Act 1998, and
- (c) any non-natural person that is a servant or agent of the Crown.

*General and supplementary***12 Regulations**

25 Regulations under section 7(2) or 10(6) are subject to the affirmative procedure.

**13 Interpretation**

In this Act, a person is responsible for an action—

- 30 (a) if the person is directly responsible for it,
- (b) if the action is attributable to the person’s neglect or if the person connived in or consented to it.

**14 Effect on common law**

The provisions of this Act are without prejudice to the offence of culpable homicide at common law.

**15 Commencement**

- 35 (1) This Act comes into force on the day after Royal Assent.
- (2) This Act does not apply in the case of any death which occurred prior to the date of Royal Assent.

**16 Short title**

The short title of this Act is the Culpable Homicide (Scotland) Act 2020.

# **Culpable Homicide (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the law relating to culpable homicide; and for connected purposes.

Introduced by: Claire Baker  
On: 1 June 2020  
Bill type: Member's Bill

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