



Ministry of
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Corporate Manslaughter and Corporate Homicide Act 2007:

Progress towards implementation of custody provisions

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Part 1: Introduction

1. This report provides Parliament with an update on the progress that is being made towards implementation of section 2(1)(d) of the Corporate Manslaughter and Corporate Homicide Act 2007.

Main provisions of Act

2. The Corporate Manslaughter and Corporate Homicide Act 2007 received Royal Assent on 26 July 2007
3. The Act applies to companies incorporated under companies legislation, other corporations including public bodies incorporated by statute such as local authorities or NHS bodies; organisations incorporated by Royal Charter; limited liability partnerships and all other partnerships that are employers; Crown bodies such as Government departments; and police forces.
4. An organisation is guilty of the new offence if the way in which its activities are managed or organised causes a death and this amounts to a gross breach of a relevant duty of care to the deceased. A substantial part of the breach must have been in the way activities were managed by senior management.
5. Relevant duties of care are set out in section 2 of the Act and include, for example, employer and occupier duties; duties connected with the supply of goods or services, commercial activities or construction and maintenance work; and duties related to holding a person in custody. The majority of the Act was implemented on 6 April 2008, with the exception of section 2(1)(d) which makes the duty of care a custody provider owes to a person who is detained a relevant duty of care, and section 10 on publicity orders where we await guidelines to be issued by the Sentencing Guidelines Council later this year. Baroness Ashton confirmed in the House of Lords on 23 July 2007 that the Government would work to implement Section 2(1)(d) within three years from commencement of the Act, but she added that a five-year lead in time might be necessary for certain custody providers.

Custodial institutions covered by the Act

6. Section 2(2) of the Act provides that a duty of care is owed to anyone who is detained at a custodial institution such as a prison, a young offenders institution/secure training centre, a juvenile justice centre or a remand centre; or in a custody area at a court or a police station. The Act also covers duties of care owed to those who are detained at immigration removal centres or short-term holding facilities; those who are being

transported in a vehicle as a result of prison or immigration escort arrangements; those who have been placed in secure accommodation; and those who are detained in any premises under the Mental Health Act 1983, the Mental Health (Northern Ireland) Order 1986 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

7. **Scotland.** This report only covers those areas that fall within the responsibility of the UK Government. It does not deal with those areas which are the responsibility of the Scottish Parliament and Scottish Government. All aspects covered by section 2(2) are devolved to the Scottish Government and Parliament except for immigration removal centres and immigration escort arrangements.
8. **Northern Ireland.** The decision when to bring the Act's provisions into force in Northern Ireland currently lies with the Secretary of State for Northern Ireland until the devolution of policing and justice to the Northern Ireland Executive. In Northern Ireland, duties related to holding patients in detention (under the Mental Health (Northern Ireland) Order 1986) and accommodating young people in secure care (under the Children (Northern Ireland) Order 1995) fall primarily upon the local Health and Social Care Boards and Trusts. These bodies are the responsibility of the Northern Ireland Minister for Health, Social Services and Public Safety, Mr Michael McGimpsey MLA. In considering when to bring into force these provisions on mental health and secure accommodation, the Secretary of State for Northern Ireland is liaising closely with the Minister, who has been consulted upon the contents of this report.

Part 2: Timing of implementation of Section 2(1)(d)

9. The Government is firmly committed to implementing section 2(1)(d) within three to five years from the time the new offence was commenced. All the custody providers in England and Wales, Northern Ireland and Scotland are working towards these provisions being commenced by April 2011 – i.e. three years from the date the rest of the Act was commenced. Some organisations might be in a position to commence even sooner. For example, having consulted the National Health Service, the Department of Health has agreed to an early extension of the Act to fully cover those detained under Mental Health legislation.
10. In recognition of the fact that most of the custody providers need time to prepare for commencement of the new offence, the Act provides that an affirmative order is required to bring section 2(1)(d) into force. The Act also allows for staged implementation of that provision in the event that certain organisations are ready to commence before others.
11. The Act, as drafted, does not currently apply to Service Custody managed by the **Ministry of Defence (MoD)**, but the MoD is content for the provisions of the Act to be extended. This will be achieved by the use of Section 23 of the Act which allows the range of situations in which custody is covered to be extended by way of an affirmative order. We intend to make an order bringing Service Custody into the scope of the Act in April 2011 at the same time as we implement the custody provisions in respect of most of the other custody providers.

Part 3: Progress towards implementation of custody provisions

Context

12. Caring for some of society's most vulnerable or volatile people is extremely complex. That is why it was made clear to Parliament when it passed this legislation that a reasonable time would be needed for custody providers to prepare for implementation of the new legislation. This report discusses progress made to date in the various areas and what remains to be done. While implementing the Act provides a useful catalyst and driver, reducing deaths in custody is a core part of long term work by the Government together with custody providers and this long term agenda is reflected in the report.
13. As the Justice Secretary made clear during the passage of the Bill on 18 July 2007 the Government was not seeking to delay implementation of these provisions so that deaths would not be inquired into, or that those responsible for negligence or worse in respect of those deaths would not to be subject to any sanction. The Police, the National Offender Management Service (which is responsible for prison and probation services in England and Wales) and the other custody providers are already under intensive scrutiny, both in terms of their systems and when, tragically, a death in custody occurs. If there is such a death in police custody there is an immediate inquiry by the Independent Police Complaints Commission in all circumstances – or by the Police Ombudsman in Northern Ireland. The police are required by statute to report all deaths and serious injuries during or after contact with the police. The Prisons and Probation Ombudsman provides independent investigation of all deaths in prisons, young offender institutions, secure training centres and immigration removal centres; and the Prisoner Ombudsman for Northern Ireland has been responsible for carrying out effective investigations into deaths in prison custody since 2005.
14. When the custody provisions of the Act are implemented, a custody provider could be prosecuted for manslaughter if gross management failures cause the death of a prisoner.

15. Following Royal Assent in July 2007, the Ministry of Justice and the Northern Ireland Office have worked closely with custody providers in England and Wales and Northern Ireland to identify potential risks to the health and safety of prisoners in their respective areas and to ensure that systems and procedures are being put in place to mitigate these risks.

Important cross cutting initiatives since July 2007

16. Important cross cutting initiatives since July 2007 include:
 - The continued implementation of Improving Health, Supporting Justice, a strategy to develop health and social care across the criminal justice system;
 - The launch of a revised Prisoner Escort Record in May 2008 to improve the way information about vulnerable or violent prisoners is shared between custody providers.

Specific initiatives taken by individual custody providers

17. Specific initiatives taken by individual custody providers include:
 - The launch of a national training programme for police in January 2008 to accompany guidance previously published on Safer Detention and Handling of Persons in Police Custody;
 - The ongoing development of training programmes in the National Offender Management Service and United Kingdom Border Agency for staff who have contact with prisoners or immigration detainees;
 - The launch of new instructions for the Court Service in the spring aimed at ensuring that deficiencies in the fabric of court custody are rectified;
 - The independent review of restraint in juvenile secure settings completed in June 2008.
18. The rest of this report provides more detail on the work we are doing to reduce the number of deaths in custody and outlines what more we need to do before the custody provisions are implemented in April 2011.

Reducing the number of deaths in custody

19. Significant progress has already been made in identifying risks to prisoners, improving the standards of care provided for those who are detained and in reducing deaths in custody. As mentioned above, work in these areas has continued since the Act received Royal Assent last July.
20. The Association of Chief Police Officers, in conjunction with the Home Office has published *Guidance on the Safer Detention and Handling of Persons in Police Custody* and established a dedicated team to help to implement it. In January 2008, a national training programme was issued to accompanying the guidance; and at the same time, national occupational

standards for healthcare professionals working in police custody were issued by Skills for Health. The Government is also undertaking a review of the Police and Criminal and Evidence Act (PACE) 1984 which includes police powers and the rights and safeguards for persons whilst in police custody.

21. The National Offender Management Service (NOMS) and the United Kingdom Border Agency (UKBA) have published detailed guidance for staff on suicide prevention and self harm management; violence reduction; segregation; and first night reception/induction and introduced care of at-risk prisoner training for all staff who have contact with prisoners or immigration detainees.
22. The Court Service in consultation with the Prison Escort Custody Service and its contractors have also introduced new mandatory instructions and processes aimed at ensuring deficiencies in the fabric of court custody areas, that present a risk to the well being of prisoners, are appropriately managed and the necessary remedial action is taken to remove such risks. The new instructions were formally introduced across the whole of the HMCS estate earlier this year.
23. The Youth Justice Board (YJB), which is responsible for purchasing places for, and placing, children and young people remanded or sentenced to custody, has also implemented a number of practical measures to minimise the risk of self harm and suicide among children in custody. This has included investing £10.5 million between 2005 and 2008 in making Young Offender Institutions safer and improving the built environment. Specifically the investment in the built environment has centred on incorporating a range of 'safer' features in custodial establishments from greater use of CCTV, safer cell furniture, and cubicular showers. The YJB has also commissioned a Review of Safeguarding to identify what more needs to be done to increase the safety of young people in custody and developed a Code of Practice on Behaviour Management to provide a guiding set of principles of effective practice in this area. In October 2007, the Government announced an independent review of restraint in juvenile secure settings. The review was jointly commissioned by the Ministry of Justice and the Department for Children Schools and Families and its conclusions were reported to Ministers on 20 June 2008.
24. In Northern Ireland, Paul Goggins, the Prisons Minister for Northern Ireland, announced in December an investment of over £70 million over the next three years to provide 400 extra prison places at Maghaberry and Magilligan Prisons and will be pressing ahead with the rebuilding of Magilligan in a phased development. Northern Ireland Prison Service is now turning its attention to the role of women in prison, and in particular the potential for a new facility for female offenders. The Northern Ireland

Court Service and Northern Ireland Prison Service have also established a joint project team to review issues relating to custody areas throughout the court estate. The team are currently working to produce a standard of accommodation for cell areas and to prioritise shared initiatives into a programme of action such as lines of communication, roles and responsibilities and protocols for on site management.

Part 4: Ongoing and future programme of work

25. Despite the significant advances of the last few years, more work is needed in the following six areas to reduce the number of deaths in custody:
- Improving communications between organisations;
 - Improving healthcare;
 - Improving the built environment;
 - Using capacity expansion to refresh the estate;
 - Improving the level of staff training; and
 - Learning the lessons from deaths/near deaths.
26. The work going on in these areas in England and Wales and Northern Ireland is discussed further below. The proposed implementation date of April 2011 should be considered in light of the various resource constraints on the agencies/organisations involved.

Improving communications between organisations

27. Deaths may have occurred in the past where information about a prisoner's vulnerability has not been communicated effectively. Prisoners with mental illnesses, women and young people, immigration detainees who face imminent removal from the United Kingdom, those on indeterminate sentences and those with drug/alcohol addictions are particularly vulnerable groups who may be at risk of self-harm. We want to ensure that any relevant information about a vulnerable person is recorded accurately and clearly so that risk can be managed more effectively.
28. A significant initiative designed to improve the quality of the information shared between custody providers is the revision of the Prisoner Escort Record (PER). The PER is essential for ensuring that accurate information is shared between the police, NOMS, the UKBA, the Secure Hospital Estate, prison escorts and contractors. A revised PER Form is being developed and this should enhance the information sharing between organisations and assist each agency providing appropriate care to the individual. The revised PER Form Pilot was launched in May 2008 and will be rolled out more widely once tests show the system is safe.
29. In addition to sharing information about vulnerable prisoners with health or social needs, custody providers are committed to working more closely together to share information about the risk violent prisoners might pose to other prisoners, members of staff or visitors to the premises. For

example, NOMS and the police are currently considering the feasibility of making details from the Police National Computer (PNC) more widely available to prison staff to help them to make better risk assessments. In the meantime an interim system has been put in place to allow prisons to send data to the police so they can be more aware of safety issues when the person concerned is next dealt with by police officers. Discussions on this issue are continuing throughout this year, 2008-09.

Improving healthcare

30. We are determined to improve the standard of healthcare across the Criminal Justice system. *Improving Health, Supporting Justice* is a joint initiative in England and Wales between the Department of Health, the Ministry of Justice and the Home Office to develop health and social care services across the criminal justice pathway for prisoners and their families with the key aim of providing appropriate access to mainstream services for this vulnerable group.
31. Chief police officers have a statutory requirement to provide access to healthcare for a person held in police custody. Forces comply with this requirement by entering into contractual arrangements with doctors, nurses and healthcare professionals. Individual force areas have entered into working arrangements with local healthcare providers but there is significant opportunity for commissioners and providers of healthcare to provide equivalence of care to those who come into contact with the police. The Offender Health Strategy provides a major opportunity to help raise NHS engagement in the delivery and monitoring of healthcare provision for those who come into contact with the police and key stakeholders are working on delivering a national framework which will enhance local delivery and access to health and social care services.
32. In public prisons, Primary Care Trusts formally took full commissioning responsibility for the delivery of healthcare services in 2006. All prisoners are screened at the point of reception into prison and those identified as possibly having a mental health problem, or vulnerable to suicide or self-harm, may be referred to one of the in-reach teams, which now provide services to all establishments for a mental health assessment. There is more to do, however, if we are to ensure that prisoners have access to the same quality of health care and health promotion as the population as a whole. For example, we intend to expand the Integrated Drug Treatment System to provide a more effective and needs-based treatment in prison through the closer integration of prison clinical services with counselling, assessment, referral, advice and through-care services.

33. In the area of youth custody, the YJB has funded and commissioned a dedicated substance misuse service for young people to address the full range of provision (clinical, educational, diversionary and resettlement). The YJB and Offender Health are currently developing guidance for the pharmacological management of substance misuse among young people in custody, which will be disseminated by 2009.

Improving the built environment

34. The early period in custody is known to be the highest period of risk of self-harm especially those who have never been held in custody before. Poor quality built environment in reception areas or lack of dedicated first night facilities can impact negatively on new prisoners and could increase the risk of self harm. Custody providers have guidance in place on the reception of prisoners, first night care and induction of prisoners, and the prevention of suicide or self harm, to support those prisons improving reception and first night facilities.
35. Another major challenge for custody providers in the years ahead is refurbishing cells in older police stations, courts and prisons so that they meet the required standards. Improving the safety of the physical environment and, in particular, ensuring that ligature points are removed from cells, is a key issue for all the main custody providers. Although the custody providers have processes in place to reduce the risks of suicide and self harm, we recognise that more needs to be done to ensure that cells are safe. The independently chaired Forum for Preventing Deaths, which was formally set up in 2006 to ensure lessons are learnt across custody settings, recently published the report of the Working Group on the Physical Environment which explored how the risk of suicide and self harm can be reduced by the appropriate design, management and layout of the custody environment.
36. The building of police stations and the design of cell and custody facilities should enable forces to comply with the requirements of the PACE and meet the standards the *Guidance on Safer Detention and Handling of Persons in Police Custody* and the Home Office Design Guide. The NOMS policy on safer accommodation is based on the Prison Service Investment Board decision of 2003 that a proportion of new permanent build accommodation would be fitted with safer cells. Safer cells can reduce risks around impulsive suicide attempts and complement a regime providing care of at-risk prisoners, but should be seen as just one part of the comprehensive suicide prevention strategy and not an end in themselves. Similar issues arise in the immigration detention estate, but a new purpose-built immigration removal centre is due for completion in early 2009 and will allow for more prisoners to be housed in purpose-built accommodation.

37. The Youth Justice Board has developed a 10 year estate development strategy and is committed to creating a discrete estate for young people that optimises supply and demand nationally and better meets the specific needs of young people.

Using capacity expansion to refresh the estate

38. Whilst the effect of a rising prison population may lead to increased cell sharing and decreased staff contact with prisoners, custody providers have cell sharing risk assessments in place. The revision of the PER Form and dissemination of information from the PNC will also be useful in minimising the risks associated with cell sharing. In the longer term, the Prison Capacity Building Programme intends to deliver 20,000 new prison places by 2014. This programme includes a substantial number of places in new prisons and through the expansions of existing prisons. It also includes some new double cells and by necessity some quick-build accommodation which does not fully meet all of the safer cell specifications. Until capacity is increased the police will continue to house Safeguard and lockout prisoners. We recognise this may provide additional challenges for the police, but we are working with them to ensure that they can fulfil their duty of care to those who are detained in police custody under the Safeguard programme.
39. There is also a concern that a disproportionate number of self inflicted deaths have occurred when prisoners have been in segregation. Custody providers have published guidance for staff on keeping segregated prisoners safe and recognise how important it is to keep this guidance under regular review. The Department of Health and NOMS are to issue further good practice guidance in late 2008.

Improving the level of staff training

40. Custody providers identified training as a key issue, though significant progress has already been made in this area. For example, in January 2008 the police launched the Safer Detention Learning and Development Programme which will ensure that sufficient training is provided to custody officers. In NOMS and UK Border Agency, care of at-risk prisoner training is now required for staff who have contact with prisoners, and additional training for specialist staff on suicide prevention and violence reduction is planned this year, 2008-09. The Department of Health continues to support prisons suicide prevention work by providing mental health awareness training for staff.
41. The findings of the review of restraint in juvenile secure settings conducted jointly on behalf of the Department for Children Schools and Families and the Ministry of Justice may identify further training needs. NOMS, funded by the YJB, the Northern Ireland Office and UK Border

Agency, are introducing a quality assurance system to all establishments using the restraint method Physical Control in Care. This will ensure staff are using restraint as safely as possible in those settings. In addition, the YJB recently initiated a Workforce Development programme to ensure that all custody officers are adequately trained to deal with the challenges children and young people present and to effect change, and are supported by management with thorough supervision and debriefing sessions. The programme includes projects to pilot enhanced training and clinical supervision for custody officers.

Learning the lessons

42. If deaths in custody are to be prevented, it is vital that custody providers have systems in place to learn from investigations and inquests into deaths in custody. NOMS already has in place a policy for following up deaths with mandatory requirements around identifying both national and local learning themes and have established ways to improve dissemination to prisons of learning from investigations by the Prisons and Probations Ombudsman, inquest findings and Inspectorate and Independent Monitoring Board reports.
43. The Independent Police Complaints Commission in conjunction with the Home Office, Association of Chief Police Officers, Police Federation and the Association of Police Authorities have established a Learning the Lessons Group which is able to gather, analyse and disseminate lessons for adverse incidents and deaths during or following police contact both in short term when required and longer term through bulletins and input into guidance and policy development. The work of the Group also feeds into the Forum for Preventing Deaths in Custody. The National Custody Forum and the regional custody fora is a network in which stakeholders and practitioners meet on a regular basis to discuss and share good practice and learning on custody matters. The National Forum is chaired by ACPO and the secretariat provided by the Home Office. The Safer Detention Assisted Implementation Team, NPIA, have recently conducted a Peer Review with each police force on progress made on implementing the Safer Detention Guidance. The Peer Review process helps identify noteworthy practice and share this with guidance providers and policy development. The Team will conduct a second Peer Review between September and December 2009 and this will provide a timely progress report on the ability of the police service to meet the proposed commencement date of April 2011.
44. The YJB has a Serious Incident Programme Board which meets monthly to review actions arising from deaths of young people in custody. Escort contractors also continue to review and check their operating practices to ensure that risks have been identified and appropriate remedial action

is being taken. The establishment of a National Partnership Board, on which all relevant agencies and escort contractors are represented at a senior level, means that operational board partners are able to work together to deliver effective and efficient movement of prisoners, promote an understanding of the roles and responsibilities of each organisation and establish clear lines of communication between them.

Northern Ireland

45. In preparing for the commencement of the Act's custody provisions, the relevant organisations in Northern Ireland face issues that are broadly similar to those facing their counterparts in Great Britain. The major work programmes currently in train within Northern Ireland's custody organisations are therefore on similar lines to those described above for England and Wales. Some key elements of this work are as follows.
46. In the Northern Ireland Prison Service (NIPS), the principal issues being addressed are the need to expand the capacity of the prison estate, as described above, and healthcare issues. In Northern Ireland, lead responsibility for the commissioning and delivery of health and social care in prisons transferred to the Department of Health, Social Services and Public Safety on 1 April 2008. NIPS has been working closely with the SE Health and Social Care Trust on the modernisation of prison healthcare. This will improve access to wider expertise in health and personal social services, and gives real scope to build on the many skills of existing healthcare staff. Also in the general area of healthcare, NIPS will also be introducing a revised 'self harm and suicide' policy, has brought in a new security re-categorisation policy, and the Safer Lives programme for young offenders who have been convicted of sexual offences, and is about to publish its internal review on the Minimisation of the Supply of Drugs in Prison.
47. The Police Service of Northern Ireland (PSNI) has adopted the ACPO Guidance on the Safer Detention and Handling of Persons in Police Custody as the cornerstone of its custodial standards across Northern Ireland. It has a work programme designed to ensure full compliance with the guidance. A key area of work which the Police Service considers must be progressed in conjunction with the Northern Ireland Office (NIO) is improvements in healthcare provision within police custody suites. The NIO has given a commitment that it will aim to ensure that a review of healthcare is carried out and recommendations implemented in time to facilitate the Police Service's readiness for the application of the Act to police custody by 2011.

48. The Northern Ireland Youth Justice Agency's juvenile justice centre also has health and safety as a key agenda item on its senior management team meetings. The Agency is rolling out a new assessment process in July 2008 to ensure a better exchange of information between its establishments, particularly for children entering custody for the first time. In addition, training of staff in both Physical Control in Care and Therapeutic Crisis Intervention takes place annually for all staff. Finally, the YJA has set targets for the safe and effective use of custody and has for the first time set a target for reducing the use of force.

Part 5: Conclusion

49. Effective risk assessment can and does minimise the risk of deaths in custody, but the initiatives outlined above cannot be completed overnight. We committed to bring section 2(1)(d) of the Act into force within three to five years from 6 April 2008 and that is what we intend to do. In fact, the majority of custody providers will be ready in three years. Where implementation can occur sooner with respect to certain organisations, we will put the necessary arrangements in place to achieve this and will keep Parliament updated of any developments in this regard.

