

PROPOSALS FROM THE HOME OFFICE TO CHANGE THE LAW ON INVOLUNTARY MANSLAUGHTER TO INTRODUCE THREE NEW OFFENCES INCLUDING A NEW OFFENCES OF RECKLESS KILLING, KILLING BY GROSS CARELESSNESS AND CORPORATE KILLING

SUMMARY

The Academy of Medical Royal Colleges has the following members:

Royal College of Anaesthetists
 Royal College of General Practitioners
 Royal College of Obstetricians and Gynaecologists
 Royal College of Ophthalmologists
 Royal College of Paediatrics and Child Health
 Royal College of Pathologists
 Royal College of Physicians of Edinburgh
 Royal College of Physicians of London
 Royal College of Physicians of Ireland
 Royal College of Physicians and Surgeons of Glasgow
 Royal College of Radiologists
 Royal College of Surgeons of Edinburgh
 Royal College of Surgeons of England
 Royal College of Surgeons in Ireland
 Faculty of Dental Surgery
 Faculty of Occupational Medicine
 Faculty of Public Health

New proposals from the Home Office to change the law appear to have profound implications for doctors in most, if not all, branches of the profession.

- Doctors would become much more liable to face criminal charges, with the possibility of a prison sentence, if patients die and there are complaints.
- The Academy accepts the logic of the proposals from the Law Commission, but believes it has not given enough attention to the need for more definition for the proposed new offences of “reckless killing” and “killing by gross carelessness” in relation to the inevitability of medical error in all branches of medicine.
- The Academy opposes immediate inclusion of the NHS and argues that the NHS is a special case, as it is not in business to make a profit, cannot charge fees, and cannot easily close institutions. It recommends that implementation in the NHS should be phased.
- The Academy supports the proposals of the Law Commission that, in the first instance, the offences be limited to corporations.
- The Academy recommends urgent consultation with the medical profession.

COMMENT FROM THE ACADEMY OF MEDICAL ROYAL COLLEGES

The Academy of Medical Royal Colleges thanks the Home Office for publishing a consultation document *Reforming the Law on Involuntary Manslaughter: The Government's proposals* (Home Office, 2000). It particularly welcomes the statement in the Foreword by the Home Secretary, The Rt Hon Jack Straw, that he welcomes "any comments on any aspects of this paper". The Academy also welcomes the provision of adequate time for consultation and consideration.

The Academy is grateful to the Royal College of Physicians of London which first drew to the attention of the Academy the considerable implications for the National Health Service (NHS) in these proposals. The Academy is also grateful to several colleagues in a number of its constituent Royal Colleges and Faculties who have contributed to the Academy's understanding of the issues.

The Academy appreciates the work done and the thoughtful publication by the Law Commission in its report number 237, *Involuntary Manslaughter*, which has been an important stimulus to the Home Office's proposals.

The Academy is pleased to comment. Paragraph numbers refer to the Home Office document.

GENERAL PRINCIPLES

The Academy accepts the arguments that there are considerable problems with the present state of the law, notably that the offence of involuntary manslaughter is too wide (Para 1.5).

Case for reform

It agrees that there is some cause for concern after high profile disasters, and that in some circumstances, and in relation to some companies, adequate remedies in law appear to be lacking.

Opportunity costs

However, there are opportunity costs in all legislation of the kind proposed. The Academy considers that whilst the case for the proposals is set out, the Home Office document is silent on the social and opportunity costs. The Academy believes that these too, should also be set out and weighed in the balance.

Gains and losses from legal action

The Home Office appears to assume that new legislation and an increased quantity of legal action will be beneficial to society as a whole. In some cases this is clearly likely to be so, but in general the Academy is less confident of widespread social gain by fostering litigation.

Medicine and the NHS as a special case

The Academy considers that the proposals on reckless killing, killing by gross carelessness and corporate killing need special consideration in relation to medical care in relation to their application in the NHS.

Parliamentary responsibility

It is, of course, for Parliament to decide ultimately where such balances should lie, and how any new laws should be constructed.

Litigation in society

Benefits

Litigation has benefit in society.

- The UK has a distinguished record of reforming legislation passes over several hundred years through which substantial benefits to the population have been achieved.
- Good laws support a community sense of justice and in particular they enable wrongs to be recognized and compensation, if appropriate, to be provided to citizens who have suffered.
- Legislation has a powerful controlling function, forcing people to comply with standards on pain of punishment.
- The rule of law is a fundamental human right and the quality of the legal and judicial systems are important criteria of a just society.

All these arguments support the continual introduction of reforming legislation which can be expected to improve the quality of life of citizens.

Losses

Legislation, like the use of medical treatments, also has adverse effects.

These include:

- Legislation is expensive, and increasingly so. Not all claims will succeed and the costs of non-successful actions represent a cost in themselves. The costs are not free to society, but must fall somewhere. In so far as the cost of compliance represents a new overhead, those costs will generally be expressed in most organizations by a rise in charges or a reduction in the range of services offered.
- Legislative action seeking compensation or punishment raises tension between people and organizations. At best it channels anger: at worst it encourages attitudes of vengeance.
- Long drawn out actions over compensation can distort grieving and delay the resolution of some medical conditions.
- There are opportunity costs for senior staff in organizations, if senior staff are diverted from their main jobs to respond to complaints, actions, court appearances or to attend inquiries. These will be substantial whenever senior officials find themselves facing possible prison sentences.
- Special implications arise in state funded services, so these are analyzed below.