Enforcing the ISM Code, and Improving Maritime Safety, with an Improved Corporate Manslaughter Act:
A Safety Culture Theory Perspective

Volume 2 of 2

by

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APPENDIX 1 – THE ISM CODE

Revised ISM Code
Effective as from 1 January 2015

INTERNATIONAL MANAGEMENT CODE FOR THE SAFE OPERATION OF SHIPS AND FOR POLLUTION PREVENTION (INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE)

PART A: IMPLEMENTATION

1. GENERAL

1.1 Definitions

The following definitions apply to parts A and B of this Code.

1.1.1 International Safety Management (ISM) Code means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Assembly, as may be amended by the Organization.

1.1.2 Company means the owner of the ship or any other organization or person such as the manager or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, in assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the Code.

1.1.3 Administration means the Government of the State whose flag the ship is entitled to fly.

1.1.4 Safety Management System means a structured and documented system enabling Company personnel to implement effectively the Company safety and environmental protection policy.

1.1.5 Document of Compliance means a document issued by a Company which complies with the requirements of this Code.

1.1.6 Safety Management Certificate means a document issued to a Company which specifies that the Company and its shipboard management operate in accordance with the approved safety management system.

1.1.7 Objective evidence means qualitative or quantitative information, records or statements of fact pertaining to the existence and implementation of a safety management system element, which is based on observation, measurement or test and which can be verified.

1.1.8 Observation means a statement of fact made during a safety management audit and substantiated by objective evidence.

1.1.9 Non-conformity means an observed situation where objective evidence indicates the non-compliance of a specified requirement.

1.1.10 Major non-conformity means a non-conformity that poses a serious threat to the safety of personnel or the environment or the lack of effective and systematic implementation of a requirement of this Code.

1.1.11 Temporary data means the day and month of each year that corresponds to the date of expiry of the relevant document or certificate.


1.2 Objectives

1.2.1 The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to marine environment, and to property.

1.2.2 Safety management objectives of the Company should, inter alia:

1.2.2.1 provide for safe practices in ship operation and a safe working environment;
2. assess all identified risks to ships, personnel and the environment and establish appropriate safeguards and
3. continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergency situations related both to safety and environmental protection.

1.2.3 The safety-management system should ensure:

1. compliance with mandatory rules and regulations; and
2. that applicable codes, guidelines and standards recommended by the Organization, Administrations, classification societies and maritime industry organizations are taken into account.

1.3 Application

The requirements of this Code may be applied to all ships.

1.4 Functional requirements for a safety-management system

Every Company should develop, implement and maintain a safety-management system (SMS) which includes the following functional requirements:

1. a safety and environmental protection policy;
2. instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;
3. defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
4. procedures for reporting accidents and non-conformities with the provisions of this Code;
5. measures to prepare for and respond to emergency situations and
6. procedures for internal audits and management reviews.

2. SAFETY AND ENVIRONMENTAL PROTECTION POLICY

2.1 The Company should establish and maintain a safety and environmental protection policy which describes how the objectives given in paragraph 1.2 will be achieved.

2.2 The Company should ensure that the policy is implemented and maintained at all levels of the organization, both shipboard and shore-based.

3. COMPANY RESPONSIBILITIES AND AUTHORITY

3.1 If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of each such entity to the Administration.

3.2 The Company should define and document the responsibility authority and inter-relationship of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.

3.3 The Company is responsible for ensuring that adequate resources and shore-based support are provided to enable the designated person or persons to carry out their functions.

4. DESIGNATED PERSON(S)

To ensure that the safe operation of each ship and to provide a link between the Company and those on board, every Company, as appropriate, should designate a person or persons having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required.

5. MASTER’S RESPONSIBILITY AND AUTHORITY

5.1 The Company should clearly define and document the master’s responsibility with regard to:

1. implementing the safety and environmental protection policy of the Company;
2. monitoring the crew in the observation of that policy;
3. issuing appropriate orders and instructions in a clear and simple manner;
4. verifying that specified requirements are observed; and
5. periodically reviewing the SMS and reporting its deficiencies to the shore-based management.

5.2 The Company should ensure that the SMS operating on board the ship contains a clear statement emphasizing the master’s authority. The Company should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the Company’s assistance as may be necessary.
6. RESOURCES AND PERSONNEL

6.1 The Company should ensure that the master is:
.1 properly qualified for command;
.2 fully conversant with the Company’s SMS and
.3 given the necessary support so that the master’s duties can be safely performed.

6.2 The Company should ensure that each ship is:
.1 manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements and
.2 appropriately masted in order to encompass all aspects of maintaining safe operation.

6.3 The Company should establish a procedure to ensure that all personnel are made aware of minimum safety management adopted by the Organization.

6.4 The Company should establish a procedure to ensure that the ship’s personnel receive appropriate training to comply with the requirements of the SMS.

6.5 The Company should establish and maintain procedures for identifying any training which may be required in support of the SMS and ensure that such training is provided for all personnel concerned.

6.6 The Company should establish a procedure by which the ship’s personnel receive relevant information on the SMS in a working language or languages understood by them.

6.7 The Company should ensure that the ship’s personnel are able to communicate effectively in the execution of their duties related to the SMS.

7. SHIPBOARD OPERATIONS

7.1 The Company should establish a procedure, plans and instructions, including a checklist, appropriate, for key shipboard operations concerning the safety of the personnel, ship and protection of the environment. The various tasks shall be defined and assigned to qualified personnel.

8. EMERGENCY PREPAREDNESS

8.1 The Company should identify potential emergency shipboard situations, and establish procedures to respond to them.

8.2 The Company should establish programmes for drills and exercises to prepare for emergency situations.

8.3 The SMS should provide for measures ensuring that the Company’s organization can respond at any time to hazards, accidents and emergency situations involving its ships.

9. REPORTS AND ANALYSIS OF NON-COMPLIANCE, ACCIDENTS AND HAZARDOUS OCCURRENCES

9.1 The SMS should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the Company, investigated and analyzed with the objective of improving safety and pollution prevention.

9.2 The Company should establish procedures for the implementation of corrective action, including measures intended to prevent recurrence.

10. MAINTENANCE OF THE SHIP AND EQUIPMENT

10.1 The Company should establish procedures to ensure that the ship is maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements which may be established by the Company.

10.2 In meeting these requirements the Company should ensure that:
.1 inspections are held at appropriate intervals;
.2 any non-conformity is reported, with its possible causes, if known;
.3 appropriate corrective action is taken; and
.4 records of these activities are maintained.

10.3 The Company should identify equipment and technical systems the sudden operational failure of which may result in hazardous situations. The SMS should provide for specific measures aimed at preventing the reliability of such equipment or systems. These measures should include the regular testing of stand-by arrangements and equipment or technical systems that are not in continuous use.

10.4 The inspections mentioned in 10.2 as well as the measures referred to in 10.3 should be integrated into the ship’s operational maintenance schedule.

11. DOCUMENTATION

11.1 The Company should establish and maintain procedures to control all documents and data which are relevant to the SMS.

11.2 The Company should ensure that:
.1 valid documents are available at all relevant locations;
.2 changes to documents are reviewed and approved by authorized personnel; and
.3 obsolete documents are promptly removed.

11.3 The documents used to describe and implement the SMS may be referred to as the Safety Management Manual. Documentation should be kept in a form that the Company considers most effective. Each ship should carry on board all documentation relevant to that ship.

12. COMPANY VERIFICATION, REVIEW AND EVALUATION

12.1 The Company should carry out internal safety audits on board and ashore at intervals not exceeding twelve months to verify whether safety and pollution prevention activities comply with the SMS. In exceptional circumstances, this interval may be extended by not more than three months.

12.2 The Company should periodically verify whether all those undertaking delegated SMS related tasks are acting in conformity with the Company’s responsibilities under the Code.

12.3 The Company should periodically evaluate the effectiveness of the SMS in accordance with procedures established by the Company.

12.4 The audits and possible corrective actions should be carried out in accordance with documented procedures.

12.5 Personnel carrying out audits should be independent of the areas being audited unless this is impractical due to the size and the nature of the Company.

12.6 The results of the audits and reviews should be brought to the attention of all personnel having responsibility in the area involved.

12.7 The management personnel responsible for the area involved should take timely corrective action on deficiencies found.
PART B - CERTIFICATION AND VERIFICATION

13 CERTIFICATION AND PERIODICAL VERIFICATION

13.1 The ship shall be operated by a Company which has been issued with a Document of Compliance with an Intern Document of Compliance in accordance with paragraph 14.1, relevant to that ship.

13.2 The Document of Compliance shall be issued by the Administration, by an organization recognized by the Administration or, at the request of the Administration, by another Contracting Government, to any Company complying with the requirements of this Code for a period specified by the Administration which shall not exceed five years. Such a document shall be accepted as evidence that the Company is capable of complying with the requirements of this Code.

13.3 The Document of Compliance is only valid for the ship types explicitly indicated in the document. Such indication shall be based on the types of ships on which the initial verification was based. Other ship types shall only be added after verification of the Company's capability to comply with the requirements of this Code applicable to such ship types. In this context, ship types are those referred to in regulation 5(1) of the Convention.

13.4 The validity of a Document of Compliance shall be subject to annual verification by the Administration or by an organization recognized by the Administration or, at the request of the Administration, by another Contracting Government within three months after or after the anniversary date.

13.5 The Document of Compliance shall be withdrawn by the Administration or, at its request, by the Contracting Government which issued the document, when the annual verification required in paragraph 13.4 is not requested or if there is evidence of major non-compliance with this Code.

13.6.1 All associated Safety Management Certificates and/or Interim Safety Management Certificates shall also be withdrawn if the Document of Compliance is withdrawn.

13.6 A copy of the Document of Compliance shall be placed on board in order that the master of the ship, if so requested, may produce it for verification by the Administration or by an organization recognized by the Administration for the purposes of the said regulations of this Code. The copy of the document is not required to be authenticated or certified.

13.7 The Safety Management Certificate shall be issued to a ship for a period which shall not exceed five years by the Administration or an organization recognized by the Administration at the request of the Administration, by another Contracting Government. The Safety Management Certificate shall be issued after verifying that the Company and its shipboard management system in accordance with the approved safety management system. A certificate shall be accepted as evidence that the ship is complying with the requirements of this Code.

13.8 The validity of the Safety Management Certificate shall be subject to at least one intermediate verification by the Administration or an organization recognized by the Administration or, at the request of the Administration, by another Contracting Government. If only one intermediate verification is to be carried out and the period of validity of the Safety Management Certificate is five years, it shall take place between the second and third anniversary date of the Safety Management Certificate.

13.9 In addition to the requirements of paragraph 13.1, the Safety Management Certificate shall be withdrawn by the Administration or, at the request of the Administration, by another Contracting Government. The Safety Management Certificate shall be withdrawn if, in the opinion of the Administration, the vessel does not comply with the requirements of this Code. If an intermediate verification required in paragraph 13.8 is not requested or if there is evidence of major non-compliance with this Code.

13.10 Notwithstanding the requirements of paragraphs 13.2 and 13.7, when the renewal verification is completed within three months before the expiry date of the existing Document of Compliance or Safety Management Certificate, the new Document of Compliance or the new Safety Management Certificate shall be valid from the date of completion of the renewal verification for a period not exceeding five years from the date of expiry of the existing Document of Compliance or Safety Management Certificate.

13.11 When the renewal verification is completed more than three months before the expiry date of the existing Document of Compliance or Safety Management Certificate, the new Document of Compliance or the new Safety Management Certificate shall be valid from the date of completion of the renewal verification form period not exceeding five years from the date of completion of the renewal verification.

13.12 When the renewal verification is completed after the expiry date of the existing Safety Management Certificate, the new Safety Management Certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of expiry of the existing Safety Management Certificate.

13.13 If renewal verification has not been completed and a new Safety Management Certificate cannot be issued or placed on board the ship before the expiry date of the existing Safety Management Certificate, the Administration may extend the existing certificate and such certificate should be completed for a further period which shall not exceed five months from the expiry date.

13.14 If a ship at the time when a Safety Management Certificate expires is not in a port in which it is to be verified, the Administration may extend the period of validity of the Safety Management Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be verified, and then only in cases where it appears proper and reasonable to do so. No Safety Management Certificate should be extended for a period longer than three months, and the ship to which an extension is granted shall not arrive in the port in which it is to be verified, be entitled by virtue of such extension to leave that port without having a new Safety Management Certificate. When the renewal verification is completed, the new Safety Management Certificate shall be valid from the date not exceeding five years from the expiry date of the existing Safety Management Certificate before the extension was granted.
14 INTERIM CERTIFICATION

14.1 An Interim Document of Compliance may be issued to facilitate initial implementation of this Code when:

.1 A new ship is newly established; or
.2 New ships are to be added to an existing document of Compliance.

Following verification that the Company has a safety management system that meets the objective of paragraph 1.2.3 of this Code, provided that the Company demonstrates plans to implement a safety management system meeting the full requirements of this Code within the period of validity of the Interim Document of Compliance. Such an Interim Document of Compliance should be issued for a period not exceeding 12 months by the Administration or by an organization recognized by the Administration for the purposes of the current reference to Annex 1, Section 6, of the Convention. The copy of the document is not required to be authenticated or notarized.

14.2 An Interim Security Management Certificate may be issued:

.1 In new ships or delivery;
.2 When a Company takes responsibility for the operation of a ship which is new to the Company;
.3 When a new flag.

Such a Security Management Certificate should be issued for a period not exceeding 6 months by the Administration or by an organization recognized by the Administration for the purposes of the current reference to Annex 1, Section 6, of the Convention. The copy of the document is not required to be authenticated or notarized.

14.3 An Administration, or at the request of the Administration, another Contracting Government may in special cases, extend the validity of an Interim Security Management Certificate for a further period which should not exceed 6 months from the date of expiry.

14.4 An Interim Security Management Certificate may be issued following verification that:

.1 The Interim Security Management Certificate, or the Interim Document of Compliance, is relevant to the ship concerned;
.2 The ship's management system provided by the Company for the ship concerned includes all elements of this Code and has been assessed during the audit for the purposes of the current reference to Annex 1, Section 6, of the Convention or demonstrated for issuance of the Interim Document of Compliance;
.3 The Company has planned the internal audit of the ship within three months;
.4 The master and officers are familiar with the safety management system and the planned arrangements for its implementation;
.5 Instructions, which have been identified as being essential, are provided prior to sailing; and
.6 Relevant information on the safety management system has been given in a working language or languages understood by the ship's personnel.

15 VERIFICATION

15.1 All verifications required by the provisions of this Code should be carried out in accordance with procedures acceptable to the Administration, taking into account the guidelines developed by the Organization*. *

* Refer to the Revised Guidelines on implementation of the International Safety Management (ISM) Code by Administrations adopted by the Organization by resolution A.1021 (28)

16 FORMS OF CERTIFICATES

16.1 The Document of Compliance, the Safety Management Certificate, the Interim Document of Compliance and the Interim Safety Management Certificate should be drawn up in a form corresponding to the models given in the appendices to this Code. If the language used in either English or French, the text should include a translation into one of those languages.

16.2 In addition to the requirements of paragraph 15.5, the ship's type indicated on the Document of Compliance and the Interim Document of Compliance may be endorsed to reflect any limitations in the operations of the ships described in the safety management system.
Corporate Manslaughter and Corporate Homicide Act 2007

AN ACT to create a new offence that, in England and Wales or Northern Ireland, is to be called corporate manslaughter and, in Scotland, is to be called corporate homicide, and to make provision in connection with that offence.

[8th July 2007]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, as they present Parliament assembled, and by the authority of the same, as follows—

Corporate Manslaughter and Corporate Homicide

1 The offence

(1) An organisation to which this section applies is guilty of an offence if any of its activities are managed or organised—

(a) care, supervision, control and management of a person in custody; and

(b) management or organisation of activities for which a corporate manslaughter or corporate homicide is liable to be committed.

(2) The organisation is guilty of an offence under this section only if the way in which its activities are managed or organised—

(a) as an employer; or

(b) as a partner, or in a trade union or employment association, that is an employer.

2 Meaning of “relevant duty of care”

(1) A “relevant duty of care”, in relation to an organisation, means any of the following duties owed by it under the law of negligence—

(a) a duty owed to its employees or to other persons working for the organisation or performing services for it;

(b) a duty owed as occupier of premises;

(c) a duty owed in connection with—

(i) the supply by the organisation of goods or services (whether for consideration or not);

(ii) the carrying on by the organisation of any construction or maintenance operation;

(iii) the carrying on by the organisation of any other activity on a commercial basis;

(iv) the use or keeping by the organisation of any plant, vehicle or other thing;

(d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.

(2) A person is within this subsection if—

(a) he is detained at a custodial institution or in a custody area at a court or police station;

(b) he is detained at a removal centre or short-term holding facility.
(c) he is being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements;

(d) he is living in secure accommodation in which he has been placed;

(e) he is in a detained patient.

(3) Subsection (1) is subject to sections 3 to 7.

(4) A reference in subsection (2) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.

(5) For the purposes of this Act, whether a particular organisation owes a duty of care to a particular individual in a question of law:
The judge must make any findings of fact necessary to decide that question.

(6) For the purposes of this Act there is to be disregarded:
(a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;
(b) any rule that has the effect of preventing duty of care from being owed to a person by reason of his acceptance of a risk of harm.

(7) In this section—
“construction or maintenance operations” means operations of any of the following descriptions—
(a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of—
(i) any building or structure;
(ii) anything else that forms, or is to form, part of the land, or
(iii) any plant, vehicle or other thing;

(b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

custodial institution” means a prison, a young offenders institution, a secure training centre, a young offenders institution, a young offenders centre, a youth justice centre or a remand centre;

detained patient” means—
(a) a person who is detained in any premises under—
(i) Part 2 or 3 of the Mental Health Act 1983 (c. 20) (“the 1983 Act”), or
(ii) Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (“the 1986 Order”);

(b) a person who (otherwise than by reason of being detained as mentioned in paragraph (a) is deemed, to be in legal custody by—
(i) section 137 of the 1983 Act,
(ii) Article 131 of the 1986 Order, or

(3) article 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provision) Order 2005 (S.L. 2005/2278),

(4) a person who is detained in any premises, or is otherwise in custody, under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp. 13) or Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 40) who is detained in a hospital under section 200 of that Act of 1995;

“immigration escort arrangements” means arrangements made under section 136 of the Immigration and Asylum Act 1999 (c. 35);

the law of negligence” includes—
(a) in relation to England and Wales, the Occupiers’ Liability Act 1957 (c. 90) and the Occupiers’ Liability Act 1984 (c. 3);
(b) in relation to Scotland, the Occupiers’ Liability (Scotland) Act 1950 (c. 36);

(c) in relation to Northern Ireland, the Occupiers’ Liability (Northern Ireland) Order 1997 (S.I. 1997/2743 (N.I. 9)), the Occupiers’ Liability (Northern Ireland) Order 1987 (S.I. 1987/ 1280 (N.I. 9)) and the Occupiers’ Liability (Landlord’s Liability) Act (Northern Ireland) 2001 (c. 10);

“prisons escort arrangements” means arrangements made under section 130 of the Criminal Justice and Public Order Act 1994 (c. 30);

“removal centre” and “short-term holding facility” have the meaning given by section 147 of the Immigration and Asylum Act 1999;

“secure accommodation” means accommodation, not consisting of or forming part of a custodial institution, provided for the purpose of restricting the liberty of persons under the age of 18.

3 Public policy decisions, exclusively public functions and statutory inspections

(1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighting of competing public interests) is not a “relevant duty of care”.

(2) Any duty of care owed in respect of things done in the course of an exclusively public function is not a “relevant duty of care” unless it falls within section 2(1)(a), (b) or (c).

(3) Any duty of care owed by a public authority in respect of inspections carried out in the course of a statutory function is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).

(4) In this section—
“exclusively public function” means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred—
(a) by the exercise of that prerogative, or
(b) by or under a statutory provision.
4 Military activities

(1) Any duty of care owed by the Ministry of Defence in respect of—
(a) operations within subsection (2),
(b) activities carried on in preparation for, or directly in support of, such operations, or
(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations,

is not a “relevant duty of care”.

(2) The operations within this subsection are operations, including peacetime operations, and operations for dealing with terrorist, civil unrest or serious public disorder, in the course of which members of the armed forces come under attack or face the threat of attack or violent resistance.

(3) Any duty of care owed by the Ministry of Defence in respect of activities carried out by members of the special forces is not a “relevant duty of care”.

(4) In this section “the special forces” means those units of the armed forces the maintenance of whose capabilities is the responsibility of the Director of Special Forces or which are for the time being subject to the operational command of that Director.

5 Policing and law enforcement

(1) Any duty of care owed by a public authority in respect of—
(a) operations within subsection (2),
(b) activities carried on in preparation for, or directly in support of, such operations, or
(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,

is not a “relevant duty of care”.

(2) Operations are within this subsection if—
(a) they are operations for dealing with terrorism, civil unrest or serious disorder,
(b) they involve the carrying on of policing or law-enforcement activities, and
(c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.

(3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a “relevant duty of care” unless it falls within section 2(1)(a), (b) or (c).

(4) In this section “policing or law-enforcement activities” includes—
(a) activities carried on in the exercise of functions that are—
(i) functions of police forces, or
(ii) functions of the same or a similar nature exercisable by public authorities other than police forces;
(b) activities carried on in the exercise of functions of constables employed by a public authority;
(c) activities carried on in the exercise of functions exercisable under Chapter 4 of Part 2 of the Serious Organised Crime and Police Act 2005 (protection of witnesses and other persons);
(d) activities carried on to enforce any provision contained in or made under the Immigration Acts.

6 Emergencies

(1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).

(2) The organisations within this subsection are—
(a) a fire and rescue authority in England and Wales,
(b) a fire and rescue authority or joint fire and rescue board in Scotland;
(c) the Northern Ireland Fire and Rescue Service Board;
(d) any other organisation providing a service of responding to emergency circumstances either—
(i) in pursuance of arrangements made with an organisation paragraph (a), (b) or (c), or
(ii) if not in pursuance of such arrangements otherwise than on a commercial basis;
(e) a relevant NHS body;
(f) an organisation providing ambulance services in pursuance of arrangements—
(i) made by, or at the request of, a relevant NHS body, or
(ii) made with the Secretary of State or with the Welsh Ministers;
(g) an organisation providing services for the transport of organs, blood, equipment or personnel in pursuance of arrangements of the kind mentioned in paragraph (f);
(h) an organisation providing a rescue service;
(i) the armed forces.

(3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which—
(a) medical treatment is carried out, or
(b) decisions within subsection (4) are made.

(4) The decisions within this subsection are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment.

(5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a “relevant duty of care” unless it falls within section 2(1)(a) or (b).

(6) Any duty of care owed in respect of action taken—
(3) Before making an application for a remedial order the prosecution must consult each enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant breach.

(4) A remedial order—
(a) must specify a period within which the steps referred to in subsection (1) are to be taken;
(b) may require the organisation to supply to an enforcement authority consulted under subsection (3), within a specified period, evidence that those steps have been taken.

A period specified under this subsection may be extended or further extended by order of the court on an application made before the end of that period or extended period.

(5) An organisation that fails to comply with a remedial order is guilty of an offence, and liable on conviction on indictment to a fine.

10 Power to order conviction etc to be published

(1) A court before which an organisation is convicted of corporate manslaughter or corporate homicide may make an order (a “publicity order”) requiring the organisation to publicise in a specified manner—
(a) the fact that it has been convicted of the offence;
(b) specified particulars of the offence;
(c) the amount of any fine imposed;
(d) the terms of any remedial order made.

(2) In deciding on the terms of a publicity order that it is proposing to make, the court must—
(a) ascertain the views of such enforcement authority or authorities (if any) as it considers appropriate, and
(b) have regard to any representations made by the prosecution or on behalf of the organisation.

(3) A publicity order—
(a) must specify a period within which the requirements referred to in subsection (1) are to be complied with;
(b) may require the organisation to supply to any enforcement authority whose views have been ascertained under subsection (2), within a specified period, evidence that those requirements have been complied with.

(4) An organisation that fails to comply with a publicity order is guilty of an offence, and liable on conviction on indictment to a fine.

Application to particular categories of organisation

11 Application to Crown bodies

(1) An organisation that is a servant or agent of the Crown is not immune from prosecution under this Act for that reason.

(2) For the purposes of this Act—
(a) a department or other body listed in Schedule 1, or
(b) a corporation that is a servant or agent of the Crown, is to be treated as owning whatever duties of care it would owe if it were a corporation that was not a servant or agent of the Crown.

(3) For the purposes of section 2—
(a) a person who is—
(i) employed by or under the Crown for the purposes of a department or other body listed in Schedule 1, or
(ii) employed by a person whose staff constitute a body listed in that Schedule,

is to be treated as employed by that department or body;
(b) any promises occupied for the purposes of—
(i) a department or other body listed in Schedule 1, or
(ii) a person whose staff constitute a body listed in that Schedule, are to be treated as occupied by that department or body.

(4) For the purposes of sections 2 to 7 anything done purportedly by a department or other body listed in Schedule 1, although as law by the Crown or by the holder of a particular office, is to be treated as done by the department or other body itself.

(5) Subsections (1)(a), (1)(b) and (4) apply in relation to a Northern Ireland department as they apply in relation to a department or other body listed in Schedule 1.

12 Application to armed forces

(1) In this Act “the armed forces” means any of the naval, military or air forces of the Crown raised under the law of the United Kingdom.

(2) For the purposes of section 2 a person who is a member of the armed forces is to be treated as employed by the Ministry of Defence.

(3) A reference in this Act to members of the armed forces includes a reference to—
(a) members of the reserve forces (within the meaning given by section 122 of the Reserve Forces Act 1996 (c. 18)) when in service or undertaking training or duties;
(b) persons serving on Her Majesty’s vessels (within the meaning given by section 132(1) of the Naval Discipline Act 1939 (c. 50)).

13 Application to police forces

(1) In this Act “police force” means—
(a) a police force within the meaning of—
(i) the Police Act 1996 (c. 16), or
(ii) the Police and Criminal Evidence Act 1984 (c. 49),
(b) the Police Service of Northern Ireland;
(c) the Police Service of Northern Ireland Reserve;
(d) the British Transport Police Force;
(e) the Civil Nuclear Constabulary;
(f) the Ministry of Defence Police.

(2) For the purposes of this Act a police force is to be treated as owning whatever duties of care it would owe if it were a body corporate.
(3) For the purposes of section 2—
   (a) a member of a police force is to be treated as employed by that force;
   (b) a special constable appointed for a police area in England and Wales is
to be treated as employed by the police force maintained by the police
authority for that area;
   (c) a special constable appointed for a police force mentioned in paragraph
   (d) or (f) of subsection (1) is to be treated as employed by that force;
   (d) a police cadet undergoing training with a view to becoming a member
   of a police force mentioned in paragraph (a) or (d) of subsection (1) is
to be treated as employed by that force;
   (e) a police cadre appointed under section 39 of the Police (Northern
   Ireland) Act 2000 (c. 32) or a police cadre appointed under section 42 of
   that Act is to be treated as employed by the Police Service of Northern
   Ireland;
   (f) a police reserve trainee appointed under section 40 of that Act is to be
   treated as employed by the Police Service of Northern Ireland;
   (g) a member of a police force seconded to the Serious Organised Crime
   Agency or the National Policing Improvement Agency to serve as a
   member of its staff is to be treated as employed by that Agency.

(4) A reference in subsection (3) to a member of a police force is to be read, in
the ease of a force mentioned in paragraph (a)(i) of subsection (3), as a reference
to a constable of that force.

(5) For the purposes of section 2 any promises or omissions for the purposes of
a police force are to be treated as constituted by that force.

(6) For the purposes of sections 2 to 7 anything that would be regarded as done by
a police force if the force were a body corporate is to be so regarded.

(7) Where—
   (a) by virtue of subsection (3) a person is treated for the purposes of section
   2 as employed by a police force, and
   (b) by virtue of any other statutory provision (whether made) he is, or is
   treated as, employed by another organisation,
the person is to be treated for those purposes as employed by both the force and
the other organisation.

14 Application to partnerships

(1) For the purposes of this Act a partnership is to be treated as owning whatever
duties of care it would owe if it were a body corporate

(2) Proceedings for an offence under this Act alleged to have been committed by
a partnership are to be brought in the name of the partnership (and not in that
of any of its members).

(3) A fine imposed on a partnership on its conviction of an offence under this Act
is to be paid out of the funds of the partnership.

(4) This section does not apply to a partnership that is a legal person under the law
by which it is governed.

15 Procedure, evidence and sentencing

(1) Any statutory provision (whatever made) about criminal proceedings applies,
subject to any prescribed adaptations or modifications in relation to
proceedings under this Act against—
   (a) a department or other body listed in Schedule 1,
   (b) a police force,
   (c) a partnership,
   (d) a trade union, or
   (e) an employers' association that is not a corporation,
as it applies in relation to proceedings against a corporation.

(2) In this section—
   "prescribed" means prescribed by regulations made by the Secretary of State;
   "provision about criminal proceedings" includes—
   (a) provision about procedure in or in connection with criminal
   proceedings;
   (b) provision about evidence in such proceedings;
   (c) provision about sentencing, or otherwise dealing with, persons
   convicted of offences.

(3) A reference in this section to proceedings is to proceedings in England and
Wales or Northern Ireland.

(4) An order under this section is subject to negative resolution procedure.

16 Transfer of functions

(1) This section applies where—
   (a) a person's death has occurred, or is alleged to have occurred, in
   connection with the carrying out of functions by a relevant public
   organisation, and
   (b) subsequently there is a transfer of those functions, with the result that
   they are still carried out but no longer by that organisation.

(2) In this section "relevant public organisation" means—
   (a) a department or other body listed in Schedule 1;
   (b) a corporation that is a servant or agent of the Crown;
   (c) a police force.

(3) Any proceedings instituted against a relevant public organisation after the
transfer for an offence under this Act in respect of the person's death are to be
instituted against—
   (a) the relevant public organisation, if any, by which the functions
   mentioned in subsection (1) are currently carried out;
   (b) if no such organisation currently carries out the functions, the relevant
   public organisation by which the functions were last carried out.

This is subject to subsection (4).
17 DPP's consent required for proceedings

Proceedings for an offence of corporate manslaughter—
(a) may not be instituted in England and Wales without the consent of the Director of Public Prosecutions;
(b) may not be instituted in Northern Ireland without the consent of the Director of Public Prosecutions for Northern Ireland.

18 No individual liability

(1) An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter.

(2) An individual cannot be guilty of aiding, abetting, counselling or procuring, or being an agent in, the commission of an offence of corporate homicide.

19 Convictions under this Act and under health and safety legislation

(1) Where in the same proceedings there is—
(a) a charge of corporate manslaughter or corporate homicide arising out of a particular set of circumstances; and
(b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances,
the jury may, if the interests of justice so require, be invited to return a verdict on each charge.

20 Abolition of liability of corporations for manslaughter at common law

The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which section 1 applies.

21 Power to extend section 1 to other organisations

(1) The Secretary of State may by order amend section 1 so as to extend the categories of organisation to which that section applies.

(2) An order under this section may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

(3) An order under this section is subject to affirmative resolution procedure.

22 Power to amend Schedule 1

(1) The Secretary of State may amend Schedule 1 by order.

(2) A statutory instrument containing an order under this section is subject to affirmative resolution procedure, unless the only amendment to Schedule 1 is that it makes any amendments within subsection (3).

In that case the instrument is subject to negative resolution procedure.

(3) An amendment is within this subsection if—
(a) it is consequential on a department or other body listed in Schedule 1 changing its name;
(b) in the case of an amendment adding a department or other body to Schedule 1, it is consequential on the transfer to the department or other body of functions all of which were previously exercisable by one or more organisations to which section 1 applies, or in the case of an amendment removing a department or other body from Schedule 1, it is consequential on—
(i) the abolition of the department or other body, or
(ii) the transfer of all the functions of the department or other body to one or more organisations to which section 1 applies.

23 Power to extend section 2(2)

(1) The Secretary of State may, by order amend section 2(2) to make it include any category of person (not already included) who—
(a) is required by virtue of a statutory provision to remain or reside on particular premises, or
(b) is otherwise subject to a restriction of his liberty.

(2) An order under this section may make any amendment to this Act that is incidental or supplementary to, or consequential on, an amendment made by virtue of subsection (1).

(3) An order under this section is subject to affirmative resolution procedure.

24 Orders

(1) A power of the Secretary of State to make an order under this Act is exercisable by statutory instrument.

(2) Where an order under this Act is subject to "negotiation resolution procedure" the statutory instrument containing the order is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Where an order under this Act is subject to "affirmative resolution procedure" the order may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

(4) An order under this Act—
(a) may make different provision for different purposes;
(b) may make transitional or saving provision.

25 Interpretation

In this Act—
"armed forces" has the meaning given by section 12(1);
"corporation" does not include a corporation sole but includes any body corporate wherever incorporated;
"employee" means an individual who works under a contract of employment or apprenticeship (whether express or implied and, if express, whether and in what writing), and related expressions are to be construed accordingly; see also sections 11(1), 12(2) and 15(3) (which apply for the purposes of section 22);
"employees association" has the meaning given by section 122 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 3));
"enforcement authority" means an authority responsible for the enforcement of any health and safety legislation;
"health and safety legislation" means any statutory provision dealing with health and safety matters, including in particular provision contained in the Health and Safety at Work etc. Act 1974 (c. 37) or the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/ 1639 (N.I. 1));
"member", in relation to the armed forces, is to be read in accordance with section 12(3);
"partnership" means—
(a) a partnership within the Partnership Act 1890 (c. 36), or

26 Minor and consequential amendments

Schedule 2 (minor and consequential amendments) has effect.

27 Commencement and savings

(1) The provisions of this Act come into force in accordance with provision made by order by the Secretary of State.

(2) An order bringing into force paragraph (6) of section 21 is subject to affirmative resolution procedure.

(3) Section 1 does not apply in relation to anything done or omitted before the commencement of that section.

(4) Section 20 does not affect any liability, investigation, legal proceeding or penalty for or in respect of an offence committed wholly or partly before the commencement of that section.

(5) For the purposes of subsection (4) an offence is committed wholly or partly before the commencement of section 20 if any of the conduct or events alleged to constitute the offence occurred before that commencement.

28 Extent and territorial application

(1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.

(2) An amendment made by this Act extends to the same part or parts of the United Kingdom as the provision to which it relates.

(3) Section 1 applies if the harm resulting in death is sustained in the United Kingdom or:
(a) within the seaward limits of the territorial sea adjacent to the United Kingdom;
(b) on a ship registered under Part 2 of the Merchant Shipping Act 1995 (c. 23);
(c) on a British-controlled aircraft as defined in section 92 of the Civil Aviation Act 1982 (c. 16);
(d) on a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968 (c. 59);
(e) in any place to which an Order in Council under section 10(1) of the Petroleum Act 1998 (c. 17) applies (criminal jurisdiction in relation to offshore activities).

(4) For the purposes of subsection (3)(b) to (d) harm sustained on a ship, aircraft or hovercraft includes harm sustained by a person who—
(a) is then no longer on board the ship, aircraft or hovercraft in consequence of the wrecking of it or of some other mishap affecting it or occurring on it, and
(b) sustains the harm in consequence of that event.

26 Short title
This Act may be cited as the Corporate Manslaughter and Corporate Homicide Act 2007.
This image is taken from A Di Lieto, *Costa Concordia Anatomy of an organisational accident* (Australian Maritime College 2012) at p. 9.
This image is taken from ‘Italy cruise ship Costa Concordia aground near Giglio’ (GeoGarage blog) <http://blog.geogarage.com/2012/01/italy-cruise-ship-costaconcordia.html> (accessed 15 September 2017).
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**NOTE:**

This photograph was taken on the night of 13 January 2012, whilst the evacuation of the *Costa Concordia* was underway. In this photograph, it can be seen that, at the time the photograph was taken, there was only one lifeboat on the starboard side that had not been launched, but it was clearly in the process of being so. This, Captain Schettino claims, is the lifeboat that was trapped and needed assistance in being detached from the *Costa Concordia*. 
This image was given to the author by Arne Sagen at his home in Sandvika, Norway, on 23 May 2016.

NOTE:

When zooming in on the photograph from Appendix 7, the image of one person can be seen (highlighted in the circle by Sagen) over the top of the last remaining lifeboat that was trapped on the starboard side of the Costa Concordia. This, Captain Schettino (and others) claims, is him.
NOTE:

At 00:17, Captain Schettino was at the lifeboat embarkation deck, together with other members of the ship’s crew on the starboard side. As the ship turned over their heads, the crew lost their footing and fell into the water below. Captain Schettino managed to jump onto the roof of the lifeboat below. The lifeboat was trapped by an extended telescopic davit, but Captain Schettino managed to free the lifeboat and steer it away from the Costa Concordia, as it was almost pushed underneath it.
This image is taken from a document given to the author by Arne Sagen, entitled ‘Costa Concordia: An ISM Code-based analysis of the accident 13.01.2012 – Italy’s handling of the accident undermines the safety of the cruise industry’.

NOTE:

This image shows the final stage of the rescue efforts after the ship had capsized. At this point, the evacuation of passengers and crew by use of the ladders down to the rescue boats was necessary. An unsuccessful launching of one of the life rafts can be seen at the left of the image.

Although the exact time that the photograph was taken is unknown, it was around the time that Captain Schettino was ordered by Captain De Falco to go back on board the Costa Concordia via the rescue ladders in order to oversee the ship’s evacuation from its bridge.
This image is taken from a document given to the author by Arne Sagen, entitled ‘Costa Concordia: An ISM Code-based analysis of the accident 13.01.2012 – Italy’s handling of the accident undermines the safety of the cruise industry’.

NOTE:

This photograph was taken during the early stages of abandoning ship, as the Costa Concordia’s list was well within the safe limit of 20 to 22.5 degrees. It depicts the deploying of life rafts, which should be a rather simple procedure, even for non-experts, but in this instance it is clear that something has gone wrong.

Captain Schettino stated that he wanted to join the last life rafts on the starboard side, which were intended for the crew. The life raft was successfully deployed, but the hook, holding the life raft to the ship was not fastened to the it securely, and so the life raft drifted away.

For cruise ships like the Costa Concordia, it is quite common for the life rafts to be serviced and re-stowed by external service personnel. If that was the case here, the ship’s crew should not be blamed.
APPENDIX 12 – THE AUTHOR’S PROPOSED AND IMPROVED CORPORATE MANSLAUGHTER ACT

Only those Sections that differ from the original Corporate Manslaughter and Corporate Homicide Act are included in this Appendix.

A Proposed and Improved Corporate Manslaughter and Corporate Homicide Act

An Act to reform the Corporate Manslaughter and Corporate Homicide Act 2007 to introduce individual liability for the offence, and to make provisions in connection to the offence.

Section 1 The Offence: Corporations

(1) An organisation to which this section applies is guilty of an offence 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 relevant duty of care owed by the organisation to the deceased.

(2) The organisations to which this section applies are—
(a) a corporation;
(b) a department or other body listed in Schedule 1;
(c) a police force;
(d) a partnership, or a trade union or employer’s association, that is an employer.

(3) An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Act—
(a) “relevant duty of care” has the meaning given by section 4, read with sections 7 to 9;
(b) a breach of a duty of care by an organisation is a “gross” breach in the conduct alleged to amount to a breach of that duty if it falls far below what can reasonably be expected of the organisation in the circumstances;
(c) “senior management”, in relation to an organisation, means the persons who play significant roles in—
(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
(ii) the actual managing or organising of the whole or a substantial part of those activities.

Section 2 The Offence: Corporate Individuals

Where an offence of corporate manslaughter is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any member of senior management referred to in section 1(3)(c), or a person who was purporting to act in such a capacity, he as well as the organisation shall be guilty of the offence of corporate manslaughter.

Section 3 Sentencing

(1) The offence under subsections 1 and 2 is liable to—
(a) a corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;
(b) corporate homicide, in so far as it is an offence under the law of Scotland.

(2) An organisation that is guilty of corporate manslaughter or corporate homicide under section 1 is liable on conviction on indictment to a fine.

(3) An individual that is guilty of corporate manslaughter or corporate homicide under section 2 is liable on conviction on indictment to imprisonment for life or any shorter term.

(4) The offence of corporate homicide is indictable only in the High Court of Justiciary.

Section 10 Factors for the Jury

(1) This section applies where—
(a) it is established that an organisation owed a relevant duty of care to a person, and
(b) it fails to the jury to decide whether there was a gross breach of that duty.

(2) The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that related to the alleged breach, and if so—
(a) how serious that failure was;
(b) how much of a risk of death it posed.

(3) The jury should also—
(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;
(b) have regard to any health and safety guidance that relates to the alleged breach.

(4) This section does not prevent the jury from having regard to any other matters they consider relevant.

(5) In this section “health and safety guidance” means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.

Section 11 Defence

It shall be a defence for an organisation charged with an offence under this Act to show that its senior management took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
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APPENDIX 13 – TABLE OF COMPARISON (ORIGINAL & PROPOSED CORPORATE MANSLAUGHTER ACTS)
Questionnaire

Could Corporate Manslaughter legislation be used to Enforce Better Compliance with the International Safety Management (ISM) Code?

Instructions
Thank you for taking the time to complete this questionnaire. Your input and contribution to this research study is important and very much appreciated.

The questionnaire should only take about 10 minutes of your time. Please ensure that you complete the current form at the beginning of this questionnaire.

Please return your completed questionnaire via email to Cleave@lancs.ac.uk or by post to:

Craig Lawrence
Lancashire Law School
University of Central Lancashire
Preston
PR1 2HE

If you have any questions about this questionnaire, please contact me at either of the addresses above.

Statement of Consent

Please read the following statements and place a cross in the boxes to indicate your agreement.

- I confirm that I have read and understand the Personal Information Sheet sent to me on 02/01/2022 and have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
- I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason.
- I agree to take part in the above study.
- I agree to the use of anonymised quotes in publications.

Please place a X in the box
Questionnaire

Section A: Personal Profile
1. Name:
2. Company/Organisation:
3. Your Job Role:
4. Email Address:
   Your name and email address will not be disclosed in the PhD thesis.

Section B: The ISM Code
5. Are you aware of the purpose of the International Safety Management (ISM) Code 2002? If so, please summarise this in your own words.

6. Please list as many positive features of the ISM Code as you can, if any.

7. Please list as many negative features of the ISM Code as you can, if any.

8. Do you feel that the ISM Code has had a positive impact on maritime safety within the international maritime community? Please give reasons.

9. Do you feel that the ISM Code has had a positive impact on maritime safety within the UK? Please give reasons.

10. Currently the ISM Code does not include any provisions apportioning liability for non-compliance of the Code to the ship operating company or the individual. Do you agree or disagree with this? Please give reasons.

11. Do you feel that the ISM Code is being implemented by ship operating companies....
   a. at the same standard now as when it was first introduced
   b. at a lower standard now as when it was first introduced
   c. at a higher standard now as when it was first introduced
   (please delete as appropriate)

12. Do you feel that the ISM Code is being implemented by seafarers....
   a. at the same standard now as when it was first introduced
   b. at a lower standard now as when it was first introduced
   c. at a higher standard now as when it was first introduced
   (please delete as appropriate)

Section C: Corporate Manslaughter
13. Within the context of the maritime industry, do you think that the introduction of individual liability under corporate manslaughter legislation (i.e. an individual within senior management of the company facing conviction if found liable for substantially contributing towards a person's death at sea) would be effective at ensuring compliance with the ISM Code?
   Yes
   No
   (please delete as appropriate and provide reasons for your answer)

For the purposes of this survey 'senior management' would include Master Mariners as well as the Designated Person Ashore and other ashore management.
14. If you answered yes to the question above, what maximum punishment would you think appropriate for the individual found liable/responsible for contributing towards a death at sea?
   a. a fine of £_____, please provide a figure) OR
   b. a custodial (prison) sentence of ________ years (please provide a figure) OR
   c. other (please provide details)

   (please choose one option from the list, filling in the blank where appropriate)

15. If you do not feel that the introduction of individual liability under corporate manslaughter legislation would result in the better implementation of the ISM Code, what do you think would result in better implementation of the Code?

16. Do you have anything you would like to add on either the ISM Code, its implementation or corporate manslaughter?

Follow-up Questions

Are you happy to be contacted for follow-up questions or if the researcher requires clarification on some of the answers you have provided?

Yes
No

   (please delete as appropriate)
Participant Information Sheet

Could Corporate Manslaughter Legislation be used to Enforce Better Compliance with the International Safety Management (ISM) Code?

You are being invited to take part in a research study to contribute towards my PhD thesis. Before you decide whether or not to take part, it is important for you to understand why the research is being undertaken, and what it will involve. Please take the time to read the following information carefully.

Purpose of the Study

My PhD critically analyses the ISM Code and examines to what extent it is being implemented by ship operating companies and individual seafarers, and to what extent this is affecting the enhancement of the safety culture envisaged by the Code, and the overall number of maritime fatalities.

My PhD further examines whether corporate manslaughter could be used as an effective tool to improve maritime safety and reduce fatalities by compelling seafarers to implement and comply with the ISM Code and maintain the "safety culture" the Code envisages.

The study you are being invited to participate in is intended to complement the research that I have already undertaken in this area by: generating discussion around the research topic, providing opinions and commentary from yourself and other professionals and experts in fields relevant to my research, and testing the overall hypothesis of my PhD.

Why You Have Been Invited to Participate

You have been invited to participate in this research study because of your experience in the fields relevant to my research i.e. maritime safety regulation and/or the criminal law.

It is up to you whether or not you take part in this study. If you do take part, your completed questionnaire will be considered to be your consent to participate. However, you are free to withdraw from the study at any time without the need to give a reason.

If you choose to withdraw from the study following the submission of your completed questionnaire, you may ask for your questionnaire not to be included as part of my overall PhD research, as long as this notification is received within one month of the date you sent the completed questionnaire.

What Will Happen If You Take Part?

If you would like to take part in the study, please reply to your email to indicate your wish to do so, or contact me using the details below. You will then be emailed a short questionnaire to be completed within two weeks. This questionnaire will take you approximately 10 minutes to complete, and will involve answering questions based on your personal experience with, or professional opinion of, the ISM Code in practice. You will be given the opportunity to provide your personal views and commentary on the topic at the end of the questionnaire. The questionnaire will also give you the option of being asked follow-up questions based on the answers that you provided.

Benefits of Taking Part

Your participation in this study will contribute towards my PhD thesis by providing experiential insight to test the accuracy of the hypothesis of my study (see below), and further help increase the understanding in the area of maritime safety regulation.

Confidentiality/Anonymity

The data collected from the questionnaires will not contain any personal information other than your name and occupation. Your name will not be published in my PhD thesis. However, reference will be made to your occupation/job role when discussing your responses to the questionnaire, but no one will be able to use this information to identify you.

What Will Happen to Your Results

Your responses will be used to test my hypothesis that:

Corporate manslaughter legislation could be used to enforce better compliance with the ISM Code.

Study Approval

This study has been approved by the University of Central Lancashire's Business, Arts, Humanities & Social Sciences (BAHSS) Ethics Committee.
Further Information and Contact Details

If you have any questions about this study, or require further information, please contact either myself or my primary supervisor:

My Contact Details
Mr Craig Laverick
Lancashire Law School
University of Central Lancashire
Preston
PR1 2HE
Email: CLaverick@ulap.ac.uk
Tel: +44 (0)1772 830378

My Primary Supervisor's Contact Details
Professor Keyuan Zou
Lancashire Law School
University of Central Lancashire
Preston
PR1 2HE
Email: KZou@ulap.ac.uk
Tel: +44 (0)1772 830362

Thank you for taking the time to read this information sheet.
APPENDIX 16 – THE NAUTICAL INSTITUTE’S SEAWAYS LETTER

The NI out and about

Representing the Nautical Institute to the maritime industry and beyond

PHD success
Congratulations to Adrian Pearson MNI (right), who was awarded his PhD in Paris last month following a successful defence of his thesis on the infrastructure efficiency of UK ports.
Claud Lavrakis MNI is working on his own PhD, focusing on the implementation of the ISM Code. He writes: “I am looking for volunteers to complete a short questionnaire as part of my research. The questionnaire is made up of 16 questions and should take no more than 10 minutes to complete. If you are interested in helping with my research project by completing a questionnaire, or if you require further information on the project, please email me at clavunk@gmail.co.uk.”

Moving up
Captain Nikos Astinos MNI has been elected to the committee of Greek Shipmasters’ Union. He has also been appointed as an instructor at the Maria Tisios TOM Academy. Congratulations!

NI Staff out and about
Bridget Hogan and Theresa Nelson MNI attended the SAIL Training International ASM in Quebec to promote The Nautical Institute’s publications and sailing training scheme.
John Lloyd MNI attended and presented at the European Dynamic Positioning Conference in London.
David Patrako MNI attended the e-flux onboard conference (below), which took place on board ship between Copenhagen and Oslo, where he gave a total of four presentations, including launching the CIRM user’s forum (see page 16 for details).

Phillip Wolfe MNI attended the FNI Council meeting.
Harry Gale MNI and Laura Nicholas attended the launch of Seafarers’ Awareness Week at Trinity House, London, as did Philip.

IMO presentation
David Squire MNI, editor of the NI’s latest publication, Human Performance and Fatigue (for Mariner), gave a lunchtime presentation on the ISO concept at the IMO. The presentation was very well received, and the audience of 60 people were keen to learn after the presentation and ask questions.

HQ visits
We were pleased to welcome a group of students from the World Maritime University to learn more about the work of The Nautical Institute and its role within the industry.

Mentoring is really working!
Captain André Le Goulzin MNI reports: “I recently went on board the tanker Solo under the command of Capt. Konstantinos D. Georghiou MNI, to do a ship-to-ship transfer operation offshore Brazil. The Master has fully engaged with the mentoring project, and has implemented many of the concepts. The Nautical Institute is promoting, including having the Chief Officer understand why he/she is working there, and having the QM forward for anchoring and stationing, and using a common language to name just a few. The vessel is manned by Greek officers, with the exception of one engineer, a Filipino deck cadet, and Filipino crew. I was recognised well before I went onboard, and once there was asked if I would speak to the officers about mentoring. I threw together an informal presentation for the 10 officers that were available that evening. From the reaction to what I was saying and the lengthy Q&A session after, it was clear that all the deck officers were engaged in mentoring as a way of life onboard. What really surprised me was the level of interest from the engineers and how they were also trying to do the same. They all saw mentoring as vital to safety and success. Mentoring is needed throughout the industry, not just for the deck department.”

At the end of the evening the Master asked the deck cadet to say a few words about how he was getting on and he seemed to be doing fine, enjoying his first trip. I asked him how he got on, on the bridge, with all the officers being Greek. “That’s no problem, sir,” he replied, “they all speak English, when I am up there.” I hope that one comment brought a lump to my throat. If that one example is the only difference we have made then, for me, all the hard work was worth it just to hear that young seafarer say that.”
I am involved in a group who are trying to locate people who might have any information regarding the rescue of seven members of the crew of the SS农副产品 from the north coast of Newfoundland on 30th December 1918. The vessel was carrying a group of books from the North Atlantic to Europe and was lost off the west coast of Newfoundland after being driven by a hurricane force wind. The Canadian government purchased the wreck and salvaged the books. I would be grateful for any information regarding the crew members and their fate.

The crew members were:
- John Bayes
- George Hunter
- John Symonds
- George Williams
- James Wilcock
- James Wilson
- Fred Williams

I am also looking for any obituaries, photos, or personal stories related to these men. If you have any information, please contact me at johnbayes1918@gmail.com. I am particularly interested in the fate of the crew members who were on board the SS农副产品 when it sank. Any information you can provide would be greatly appreciated.

I would be grateful for any information you can provide, and I hope to continue this search for as long as possible. Thank you for your help.

John Bayes

---

**WANTED: info on Stolwijk rescue**

I am involved in a group who are trying to locate people who might have any information regarding the rescue of seven members of the crew of the SS农副产品 from the north coast of Newfoundland on 30th December 1918. The vessel was carrying a group of books from the North Atlantic to Europe and was lost off the west coast of Newfoundland after being driven by a hurricane force wind. The Canadian government purchased the wreck and salvaged the books. I would be grateful for any information regarding the crew members and their fate.

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John Bayes

---

**APPENDIX 17 – NAUTILUS’ TELEGRAPH LETTER**

I am involved in a group who are trying to locate people who might have any information regarding the rescue of seven members of the crew of the SS农副产品 from the north coast of Newfoundland on 30th December 1918. The vessel was carrying a group of books from the North Atlantic to Europe and was lost off the west coast of Newfoundland after being driven by a hurricane force wind. The Canadian government purchased the wreck and salvaged the books. I would be grateful for any information regarding the crew members and their fate.

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John Bayes

---

**WANTED: info on Stolwijk rescue**

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I would be grateful for any information you can provide, and I hope to continue this search for as long as possible. Thank you for your help.

John Bayes
APPENDIX 18 – LIST OF NVIVO NODES

<table>
<thead>
<tr>
<th>Name</th>
<th>Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section A Personal Details</td>
<td>26</td>
</tr>
<tr>
<td>Q3 Job Role</td>
<td>25</td>
</tr>
<tr>
<td>Academic or researcher</td>
<td>7</td>
</tr>
<tr>
<td>FSA employee</td>
<td>3</td>
</tr>
<tr>
<td>Lawyer</td>
<td>2</td>
</tr>
<tr>
<td>Maritime specialist or practitioner</td>
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</tr>
<tr>
<td>On-shore management</td>
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</tr>
<tr>
<td>Seafarer</td>
<td>4</td>
</tr>
<tr>
<td>Section B The ISM Code</td>
<td>25</td>
</tr>
<tr>
<td>Q10 ISM Lacks Provisions Apportioning Blame</td>
<td>10</td>
</tr>
<tr>
<td>Agree - Code not intended for liability</td>
<td>1</td>
</tr>
<tr>
<td>Agree - criminalisation of seafarans</td>
<td>3</td>
</tr>
<tr>
<td>Agree - enforcement methods already in place are sufficient</td>
<td>2</td>
</tr>
<tr>
<td>Answer not provided</td>
<td>10</td>
</tr>
<tr>
<td>Disagree - the Code should be used to attribute liability and blame</td>
<td>5</td>
</tr>
<tr>
<td>Q11 Implementation by Ship Operating Companies</td>
<td>25</td>
</tr>
<tr>
<td>Higher</td>
<td>10</td>
</tr>
<tr>
<td>Lower</td>
<td>5</td>
</tr>
<tr>
<td>Same</td>
<td>7</td>
</tr>
<tr>
<td>Unknown</td>
<td>3</td>
</tr>
<tr>
<td>Q12 Implementation by Seafarans</td>
<td>25</td>
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<tr>
<td>Higher</td>
<td>13</td>
</tr>
<tr>
<td>Lower</td>
<td>5</td>
</tr>
<tr>
<td>Q5 Purpose of the ISM Code</td>
<td>23</td>
</tr>
<tr>
<td>Accountability</td>
<td>3</td>
</tr>
<tr>
<td>Avoid damage to ship</td>
<td>4</td>
</tr>
<tr>
<td>Avoid damage to the environment</td>
<td>15</td>
</tr>
<tr>
<td>Defining roles and authority for safety</td>
<td>6</td>
</tr>
<tr>
<td>Guidance for operations</td>
<td>3</td>
</tr>
<tr>
<td>Highlight problems</td>
<td>0</td>
</tr>
<tr>
<td>Improve performance of shipping</td>
<td>4</td>
</tr>
<tr>
<td>Improve safety at sea and safety management</td>
<td>12</td>
</tr>
<tr>
<td>Prevent human loss</td>
<td>5</td>
</tr>
<tr>
<td>Safety awareness</td>
<td>1</td>
</tr>
<tr>
<td>Safety culture</td>
<td>2</td>
</tr>
<tr>
<td>SMS and internal rules</td>
<td>6</td>
</tr>
<tr>
<td>Umbrella instrument</td>
<td>3</td>
</tr>
<tr>
<td>Q6 Positive Features</td>
<td>25</td>
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<tr>
<td>Accreditation</td>
<td>1</td>
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<tr>
<td>Best practice and harmonisation</td>
<td>5</td>
</tr>
<tr>
<td>Business efficiency</td>
<td>0</td>
</tr>
<tr>
<td>Clearly outlines authority</td>
<td>7</td>
</tr>
<tr>
<td>Communication</td>
<td>1</td>
</tr>
<tr>
<td>Comprehensive and simply written</td>
<td>3</td>
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<tr>
<td>DPA</td>
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</tbody>
</table>
Q7 Negative Features
- Commercial focus
- Communication
- Complacency
- Confused with seaworthiness
- Cost
- Crew - familiarity with SMS
- Crew - training, knowledge and experience
- Documents can be falsified

Q8 Positive Impact (Internationally)
- No - Code increases power of companies
- No - displaces skills and initiatives
- No - evidenced by attitudes
- Yes - evidenced by attitudes
- Yes - evidenced by auditing
- Yes - harmonised standards
- Yes - in addition to other factors
Yes - increased safety awareness 5
Yes - misc 3
Yes - reduction in fatalities 2
Yes - SMS requirement 1
Yes but complacency is increasing 4

Q9 Positive Impact (UK)
NA - UK was already operating safe ships 4
No - increases power of companies 1
No - waste of money 1
Unknown 8
Yes - evidenced by attitudes 3
Yes - evidenced by increased inspection and enforcement 3
Yes - evidenced by statistics and research 3
Yes - foreign ships entering UK waters have improved 1
Yes - SMS requirement 2

Section C Corporate Manslaughter

Q13 Would Individual Liability be Effective at Ensuring Compliance
No - cannot see link between corporate manslaughter and ISM 3
No - for individual States to legislate 2
No - industrial self-regulation 1
No - legislation already in place 4
No - no reason given 2
No - will only affect middle management 1
Yes 16

Q14 Maximum Punishment
Custodial sentence 9
Fine 5
No punishment 1
Other 1
Unknown 5

Q15 Alternatives to Individual Liability
Do not agree with Code 1
FSA and RO liability 2
Naming and shaming 2
Political and International pressure 1
Raising awareness and improving training 4
Stricter enforcement - PSC 5
Unknown 1

Q16 Additional Comments
Agree with balance between corporate and individual liability 2
Corporate manslaughter and ISM interaction 2
Criminal sanctions do not work 2
Implementation issues 3
Increased prosecution could mean culprits hide behind corporate veil 1
ISM allows for better inspection and detention 1
ISM needs to be modified so it is more applicable to the diversified business environment 1
Master not senior management 1
Plea agreements and out of court settlements 1
<table>
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<th>Issue</th>
<th>Count</th>
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<td>Punishment should have been present from the beginning</td>
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</tr>
<tr>
<td>Scapegoats</td>
<td>3</td>
</tr>
<tr>
<td>SMS need to be simplified</td>
<td>1</td>
</tr>
<tr>
<td>Support for individual liability</td>
<td>3</td>
</tr>
</tbody>
</table>
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