

**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

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, on assuming such responsibility, has agreed to take over all the duties and responsibility 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 the Company to implement effectively the Company safety and environmental protection policy.
- 1.1.5 *Document of Compliance* means a document issued to a Company which complies with the requirements of this Code.
- 1.1.6 *Safety Management Certificate* means a document issued to a ship which signifies that the Company and its shipboard management operate in accordance with the approved safety management system.
- 1.1.7 *Objective evidence* means quantitative or qualitative information, records or statements of fact pertaining to safety or 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 a situation where objective evidence indicates the non-fulfilment of a specified requirement.
- 1.1.10 *Major non-conformity* means an identifiable deviation that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment that requires immediate corrective action or the lack of effective and systematic implementation of a requirement of this Code.
- 1.1.11 *Anniversary date* means the day and month of each year that corresponds to the date of expiry of the relevant document or certificate.
- 1.1.12 *Convention* means the International Convention for the Safety of Life at Sea, 1974 as amended.

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 the marine environment, and to the avoidance of pollution.
- 1.2.2 Safety management objectives of the Company should, *inter alia*:
 - .1 provide for safe practices in ship operation and a safe working environment;
 - .2 assess all identified risks to its 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 emergencies 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 procedures 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 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, ship-based 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 such entity to the Administration.

3.2 The Company should define and document the responsibility, authority and interrelation 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 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 ashore having direct access to the highest level of management. The responsibility 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 motivating 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 the relevant international, national and company requirements;
 - 2 appropriately manned in order to encompass all aspects of maintaining safe operation on board.*
- * Refer to the Principles of minimum safe manning, adopted by the Organization by Resolution A.1047(27)
- 6.3 The Company should establish procedures to ensure that new personnel and personnel transferred to new assignments related to safety and protection of the environment are given proper familiarization with their duties. Instructions which are essential to be provided prior to sailing should be identified, documented and given.
- 6.4 The Company should ensure that all personnel involved in the Company's SMS have an adequate understanding of relevant rules, regulations, codes and guidelines.
- 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 procedures 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
- The Company should establish procedures, plans and instructions, including checklist as appropriate, for key shipboard operations concerning the safety of the personnel, ship and procedure of the environment. The various tasks should 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 actions.
- 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-CONFORMITIES, 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 analysed 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 repaired, with the possible cause, if known;
 - 3 appropriate records are kept;
 - 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 promoting 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 routine.
- ## 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 verify the safety of the ship 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 exceeded by not more than three months.
- 12.2 The Company should periodically verify whether all those undertaking delegated ISM-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 impracticable 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 should be operated by a Company which has been issued with a Document of Compliance or with an Interim Document of Compliance in accordance with paragraph 14.1, relevant to that ship.
- 13.2 The Document of Compliance should be issued by the Administration, by an organization recognized by the Administration or, at the request of the Administration, by the Contracting Government. The Company should be a Company complying with the requirements of this Code for a period specified by the Administration which should not exceed five years. Such a document should 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 should be based on the types of ships on which the initial verification was based. Other ship types should 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 IX/1 of the Convention.
- 13.4 The validity of a Document of Compliance should 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 before or after the anniversary date.
- 13.5 The Document of Compliance should 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-conformities with this Code.
- 13.5.1 All associated Safety Management Certificates and/or Interim Safety Management Certificates should also be withdrawn if the Document of Compliance is withdrawn.
- 13.6 A copy of the Document of Compliance should be placed on board in order that the master of the ship, if so requested, produces it for verification by the Administration or by an organization recognized by the Administration or for the purposes of the control referred to in regulation IX/6.2 of the Convention. The copy of the document is not required to be authenticated or certified.
- 13.7 The Safety Management Certificate should be issued to a ship for a period which should not exceed five years by the Administration or an organization recognized by the Administration or, at the request of the Administration, by another Contracting Government. The Safety Management Certificate should be issued after verifying that the Company and its shipboard management operate in accordance with the approved safety management system. Such a certificate should be accepted as evidence that the ship is complying with the requirements of this Code.

- 13.8 The validity of the Safety Management Certificate should 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 should take place between the second and third anniversary date of the Safety Management Certificate.
- 13.9 In addition to the requirements of paragraph 13.5.1, the Safety Management Certificate should be withdrawn by the Administration or, at the request of the Administration, by the Contracting Government which has issued it, when the intermediate verification required in paragraph 13.8 is not requested or if there is evidence of major non-conformities 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 should 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 should be valid from the date of completion of the renewal verification for a 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 should 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 a renewal verification has been completed and a new Safety Management Certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the Administration or organization recognized by the Administration may endorse the existing certificate and such a certificate should be accepted as valid for a further period which should 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 should 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 of longer than three months, and the ship to which an extension period should not, on its return to the port in which it is to be verified, be entitled to the benefit of the extension to leave that port without having a new Safety Management Certificate. When the renewal verification is completed, the new Safety Management Certificate should be valid to a 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 Company is newly established; or
- .2 new ship types are to be added to an existing Document of Compliance,

following verification that the Company has a safety management system that meets the objectives of this Code and that the Company has approved the Company's 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 Contracting Government, at the request of the Administration, by another Contracting Government. A copy of the Interim Document of Compliance should 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 or for the purposes of the control referred to in regulation IX/6.2 of the Convention. The copy of the document is not required to be authenticated or certified.

14.2 An Interim Safety Management Certificate may be issued:

- .1 to new ships on delivery;
 - .2 to the Company; or
 - .3 when a ship changes flag.
- Such an Interim Safety Management Certificate should be issued for a period not exceeding 6 months by the Administration or an organization recognized by the Administration or, at the request of the Administration, by another Contracting Government.

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

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

- .1 the Document of Compliance, or the Interim Document of Compliance, is relevant to the ship concerned;
- .2 the safety management system provided by the Company for the ship concerned includes key elements of this Code and has been assessed during the audit for issuance of the Document of Compliance 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.1071 (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 appendix to this Code. If the language used is neither English nor French, the text should include a translation into one of these languages.

16.2 In addition to the requirements of paragraph 13.3 the ship types 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 managing system.

APPENDIX 2 – THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

c. 19

ELIZABETH II



Corporate Manslaughter and Corporate Homicide Act 2007

2007 CHAPTER 19

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. [28th July 2007]

ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this 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 the way in which its activities are managed or organised—
- causes a person's death, and
 - 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 corporation,
 - a department or other body listed in Schedule 1,
 - a police force,
 - a partnership, or a trade union or employers' 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).

2

Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19)

- (4) For the purposes of this Act—
- "relevant duty of care" has the meaning given by section 2, read with sections 3 to 7;
 - a breach of a duty of care by an organisation is a "gross" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;
 - "senior management", in relation to an organisation, means the persons who play significant roles in—
 - the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
 - the actual managing or organising of the whole or a substantial part of those activities.
- (5) The offence under this section is called—
- corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;
 - corporate homicide, in so far as it is an offence under the law of Scotland.
- (6) An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.
- (7) The offence of corporate homicide is indictable only in the High Court of Justiciary.

Relevant duty of care

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 duty owed to its employees or to other persons working for the organisation or performing services for it;
 - a duty owed as occupier of premises;
 - a duty owed in connection with—
 - the supply by the organisation of goods or services (whether for consideration or not),
 - the carrying on by the organisation of any construction or maintenance operations,
 - the carrying on by the organisation of any other activity on a commercial basis, or
 - the use or keeping by the organisation of any plant, vehicle or other thing;
 - 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—
- he is detained at a custodial institution or in a custody area at a court or police station;
 - 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 a detained patient.

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

(4) A reference in subsection (1) 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 is 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 such rule that has the effect of preventing a 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 offender institution, a secure training centre, a young offenders institution, a young offenders centre, a juvenile 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

(iii) article 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078);

- (c) 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. 46) or 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. 33);

“the law of negligence” includes—

(a) in relation to England and Wales, the Occupiers’ Liability Act 1957 (c. 31), the Defective Premises Act 1972 (c. 35) and the Occupiers’ Liability Act 1984 (c. 3);

(b) in relation to Scotland, the Occupiers’ Liability (Scotland) Act 1960 (c. 30);

(c) in relation to Northern Ireland, the Occupiers’ Liability Act (Northern Ireland) 1957 (c. 25), the Defective Premises (Northern Ireland) Order 1975 (S.I. 1975/1039 (N.I. 9)), the Occupiers’ Liability (Northern Ireland) Order 1987 (S.I. 1987/1280 (N.I. 15)) and the Defective Premises (Landlord’s Liability) Act (Northern Ireland) 2001 (c. 10);

“prison escort arrangements” means arrangements made under section 80 of the Criminal Justice Act 1991 (c. 53) or under section 102 or 118 of the Criminal Justice and Public Order Act 1994 (c. 33);

“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 weighing of competing public interests) is not a “relevant duty of care”.

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

(3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise 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;

"statutory function" means a function conferred 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 peacekeeping operations and operations for dealing with terrorism, 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 on 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 (d).
- (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 (c. 15) (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 within 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)(e) or (f).
- (6) Any duty of care owed in respect of action taken—

- 7
- (a) in order to comply with a direction under Schedule 3A to the Merchant Shipping Act 1995 (c. 21) (safety directions), or
- (b) by virtue of paragraph 4 of that Schedule (action in lieu of direction), is not a "relevant duty of care" unless it falls within section 2(1)(a) or (b).

(7) In this section –

"emergency circumstances" means circumstances that are present or imminent and –

- (a) are causing, or are likely to cause, serious harm or a worsening of such harm, or
- (b) are likely to cause the death of a person;
- "medical treatment" includes any treatment or procedure of a medical or similar nature;
- "relevant NHS body" means –

- (a) a Strategic Health Authority, Primary Care Trust, NHS trust, Special Health Authority or NHS foundation trust in England;
- (b) a Local Health Board, NHS trust or Special Health Authority in Wales;
- (c) a Health Board or Special Health Board in Scotland, or the Common Services Agency for the Scottish Health Service;
- (d) a Health and Social Services trust or Health and Social Services Board in Northern Ireland;

"serious harm" means –

(a) serious injury to or the serious illness (including mental illness) of a person;

(b) serious harm to the environment (including the life and health of plants and animals);

(c) serious harm to any building or other property.

(8) A reference in this section to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

7 Child-protection and probation functions

- (1) A duty of care to which this section applies is not a "relevant duty of care" unless it falls within section 2(1)(d), (b) or (c).
- (2) This section applies to any duty of care that a local authority or other public authority owes in respect of the exercise by it of functions conferred by or under –
- (a) Parts 4 and 5 of the Children Act 1989 (c. 41);
- (b) Part 2 of the Children (Scotland) Act 1995 (c. 36), or
- (c) Parts 5 and 6 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (3) This section also applies to any duty of care that a local probation board or other public authority owes in respect of the exercise by it of functions conferred by or under –
- (a) Chapter 1 of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43);
- (b) section 27 of the Social Work (Scotland) Act 1968 (c. 49), or
- (c) Article 4 of the Probation Board (Northern Ireland) Order 1982 (S.I. 1982/713 (N.I. 10)).

Gross breach

8 Factors for 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 falls 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 relates 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 may 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.

Remedial orders and publicity orders

9 Power to order breach etc to be remedied

(1) A court before which an organisation is convicted of corporate manslaughter or corporate homicide may make an order (a "remedial order") requiring the organisation to take specified steps to remedy –

- (a) the breach mentioned in section 1(1) ("the relevant breach");
- (b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death;
- (c) any deficiency, as regards health and safety matters, in the organisation's policies, systems or practices of which the relevant breach appears to the court to be an indication.

(2) A remedial order may be made only on an application by the prosecution specifying the terms of the proposed order.

Any such order must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the organisation.

(3) Before making an application for a remedial order the prosecution must consult such 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 publicised

(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 owing 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 premises 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 in 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 (3)(a)(i), (3)(b)(i) 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 1(2) of the Reserve Forces Act 1996 (c. 14)) 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 1957 (c. 53)).

13 Application to police forces

(1) In this Act “police force” means –

- (a) a police force within the meaning of –
 (i) the Police Act 1966 (c. 16), or
 (ii) the Police (Scotland) Act 1967 (c. 77);
- (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 owing 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 trainee appointed under section 39 of the Police (Northern Ireland) Act 2000 (c. 32) or a police cadet 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 Reserve;
 - (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 case of a force mentioned in paragraph (a)(ii) of subsection (1), as a reference to a constable of that force.
- (5) For the purposes of section 2 any premises occupied for the purposes of a police force are to be treated as occupied 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 (whenever 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 owing 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 (whenever 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 an order 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;

"statutory" means contained in, or in an instrument made under, any Act or any Northern Ireland legislation.
- (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).

- (4) If an order made by the Secretary of State so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (3) may be instituted, or (if they have already been instituted) may be continued, against—
- the organisation mentioned in subsection (1), or
 - such relevant public organisation (other than the one mentioned in subsection (1) or the one mentioned in subsection (5)(a) or (b)) as may be specified in the order.
- (5) If the transfer occurs while proceedings for an offence under this Act in respect of the person's death are in progress against a relevant public organisation, the proceedings are to be continued against—
- the relevant public organisation, if any, by which the functions mentioned in subsection (1) are carried out as a result of the transfer; or
 - if as a result of the transfer no such organisation carries out the functions, the same organisation as before.
- This is subject to subsection (6).
- (6) If an order made by the Secretary of State so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (5) may be continued against—
- the organisation mentioned in subsection (1), or
 - such relevant public organisation (other than the one mentioned in subsection (1) or the one mentioned in subsection (5)(a) or (b)) as may be specified in the order.
- (7) An order under subsection (4) or (6) is subject to negative resolution procedure.
- 17 DPP's consent required for proceedings**
- Proceedings for an offence of corporate manslaughter—
- may not be instituted in England and Wales without the consent of the Director of Public Prosecutions;
 - may not be instituted in Northern Ireland without the consent of the Director of Public Prosecutions for Northern Ireland.
- 18 No individual liability**
- An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter.
 - An individual cannot be guilty of aiding, abetting, counselling or procuring, or being art and part in, the commission of an offence of corporate homicide.
- 19 Convictions under this Act and under health and safety legislation**
- Where in the same proceedings there is—
 - a charge of corporate manslaughter or corporate homicide arising out of a particular set of circumstances, and
 - 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.

- An organisation that has been convicted of corporate manslaughter or corporate homicide arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances.
 - In this section "health and safety offence" means an offence under any health and safety legislation.
- 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.
- General and supplemental*
- 21 Power to extend section 1 to other organisations**
- The Secretary of State may by order amend section 1 so as to extend the categories of organisation to which that section applies.
 - 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).
 - An order under this section is subject to affirmative resolution procedure.
- 22 Power to amend Schedule 1**
- The Secretary of State may amend Schedule 1 by order.
 - A statutory instrument containing an order under this section is subject to affirmative resolution procedure, unless the only amendments to Schedule 1 that it makes are amendments within subsection (3). In that case the instrument is subject to negative resolution procedure.
 - An amendment is within this subsection if—
 - it is consequential on a department or other body listed in Schedule 1 changing its name,
 - in the case of an amendment adding a department or other body to Schedule 1, it is consequential on the transfer of 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—
 - the abolition of the department or other body, or
 - 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)**
- 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 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.

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 "negative 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 oral or in writing), and related expressions are to be construed accordingly; see also sections 11(3)(a), 12(2) and 13(3) (which apply for the purposes of section 2);

"employers' 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. 5));

"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. 1978/1039 (N.I. 9));

"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. 39), or

- (b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24), or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom;
- "police force" has the meaning given by section 13(1);
- "premises" includes land, buildings and moveable structures;
- "public authority" has the same meaning as in section 6 of the Human Rights Act 1998 (c. 42) (disregarding subsections (3)(a) and (4) of that section);
- "publicity order" means an order under section 10(1);
- "remedial order" means an order under section 9(1);
- "statutory provision" except in section 15, means provision contained in, or in an instrument made under, any Act, any Act of the Scottish Parliament or any Northern Ireland legislation;
- "trade union" has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)).

26 Minor and consequential amendments

Schedule 2 (minor and consequential amendments) has effect.

27 Commencement and savings

- (1) The preceding 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 (d) of section 2(1) 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

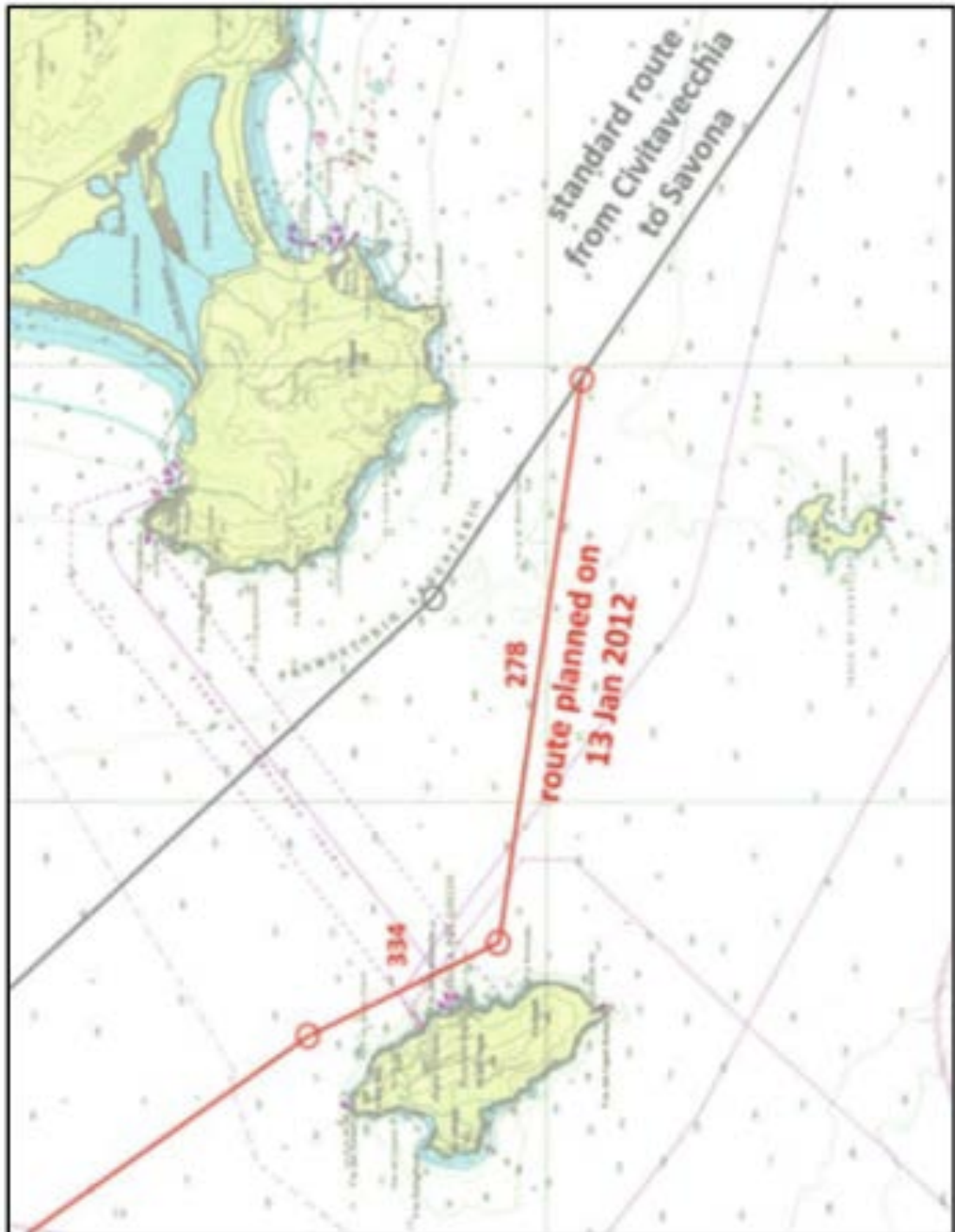
- (1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) An amendment made by this Act extends to the same part or parts of the United Kingdom as the provision to which it relates.
- (3) Section 1 applies if the harm resulting in death is sustained 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. 21);
 - (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.

29 Short title

This Act may be cited as the Corporate Manslaughter and Corporate Homicide Act 2007.

APPENDIX 3 – THE *COSTA CONCORDIA*'S ORIGINAL & DEVIATED ROUTES



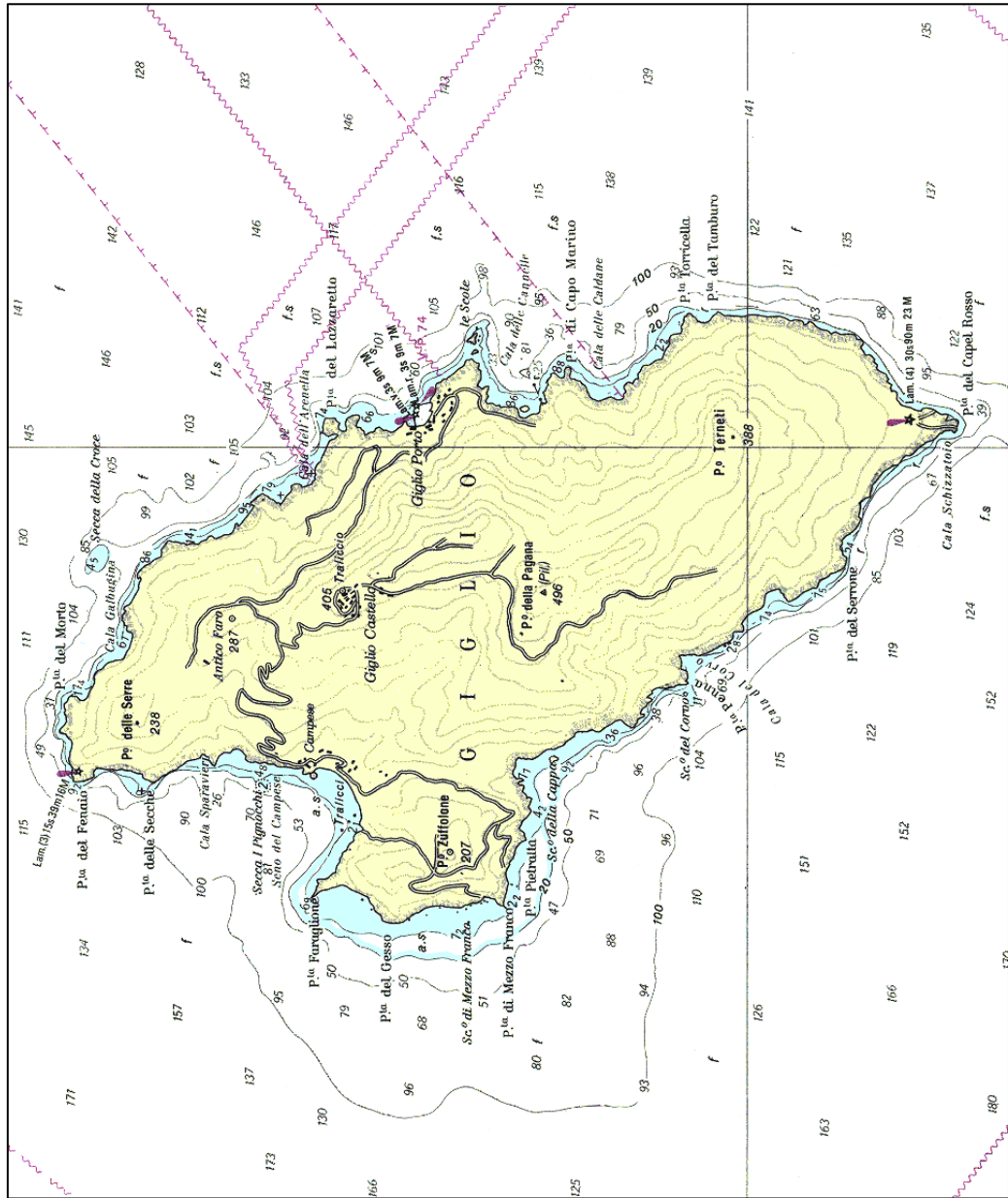
This image is taken from A Di Lieto, *Costa Concordia Anatomy of an organisational accident* (Australian Maritime College 2012) at p. 9.

APPENDIX 4 – NAVIGATIONAL PAPER CHART 1:100,000



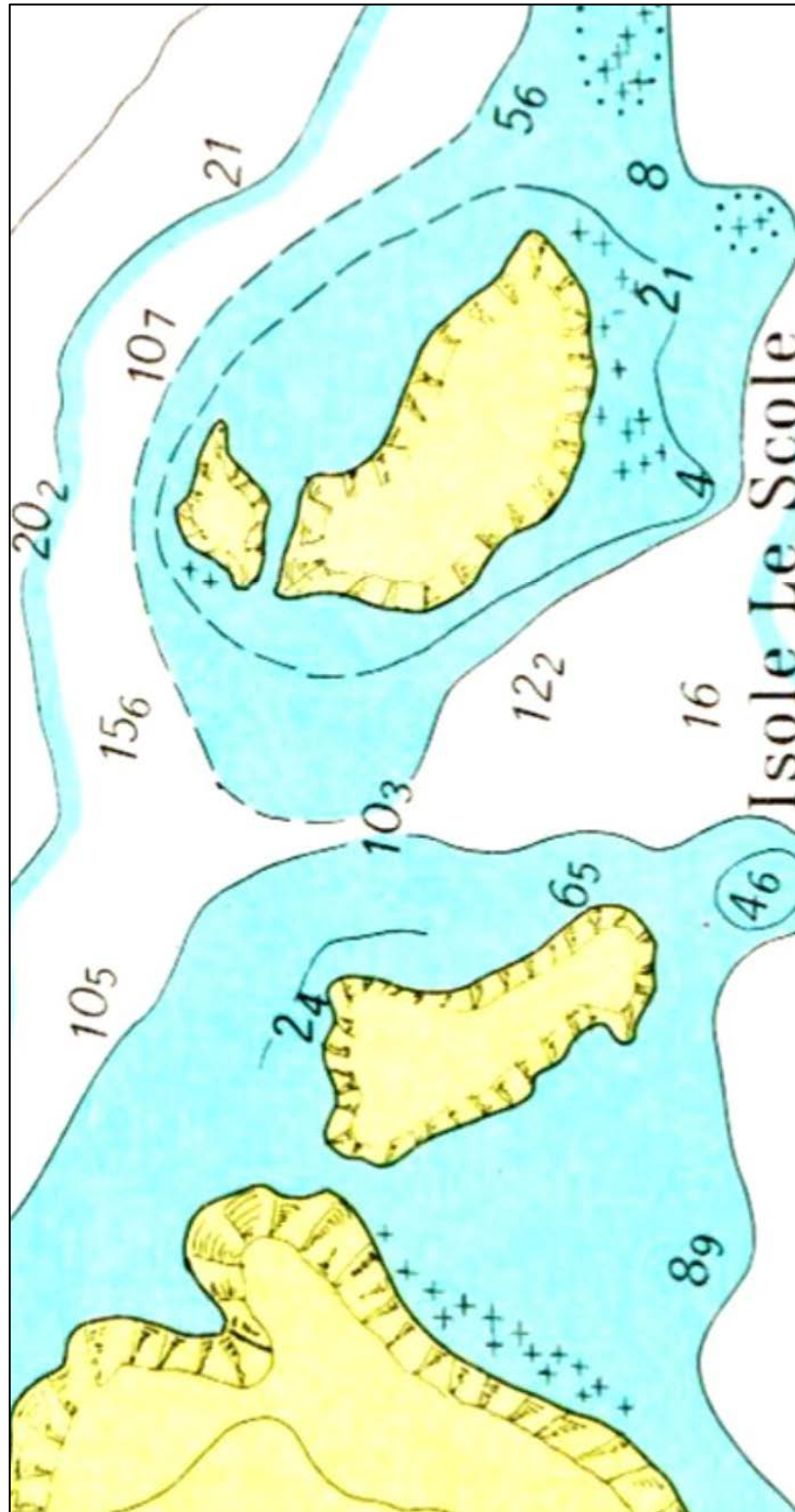
This image is taken from 'Italy cruise ship Costa Concordia aground near Giglio' (*GeoGarage blog*) <<http://blog.geogarage.com/2012/01/italy-cruise-ship-costa-concordia.html>> (accessed 15 September 2017).

APPENDIX 5 – NAVIGATIONAL PAPER CHART 1:20,000



This image is taken from 'Italy cruise ship Costa Concordia aground near Giglio' (GeoGarage blog) <<http://blog.geogarage.com/2012/01/italy-cruise-ship-costa-concordia.html>> (accessed 15 September 2017).

**APPENDIX 6 – NAVIGATIONAL PAPER CHART
1:5,000**



This image is taken from 'Italy cruise ship Costa Concordia aground near Giglio' (*GeoGarage blog*) <<http://blog.geogarage.com/2012/01/italy-cruise-ship-costa-concordia.html>> (accessed 15 September 2017).

APPENDIX 7 – *COSTA CONCORDIA* IMAGE 1



This image is taken from Burrough B and McKenna J, ‘Another night to remember’ *Vanity Fair* (10 April 2012) <<https://www.vanityfair.com/culture/2012/05/costa-concordia-sinking-scandal-italy>> (accessed 15 September 2017).

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*.

APPENDIX 8 – *COSTA CONCORDIA* IMAGE 2

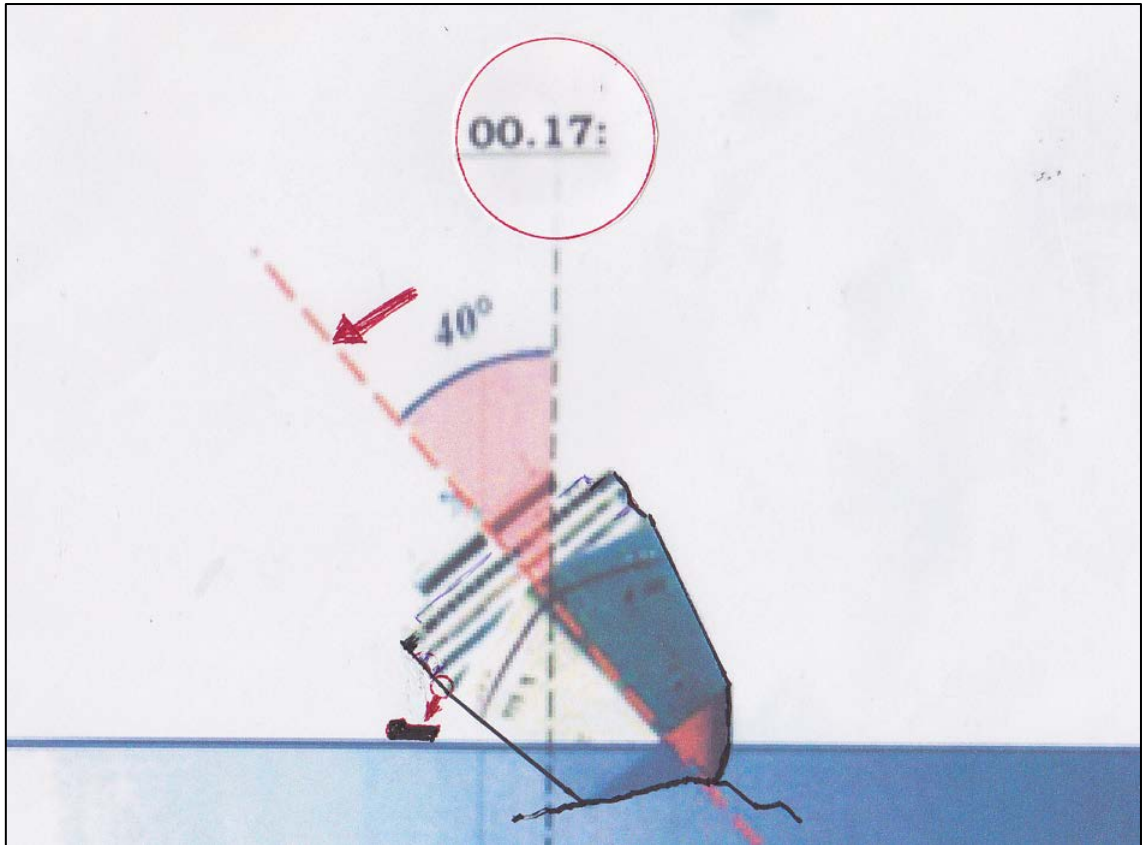


This image was given to the author by Arne Sagen at his home in Sandvika, Norway, on 23 May 2016.

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.

APPENDIX 9 – *COSTA CONCORDIA* IMAGE 3

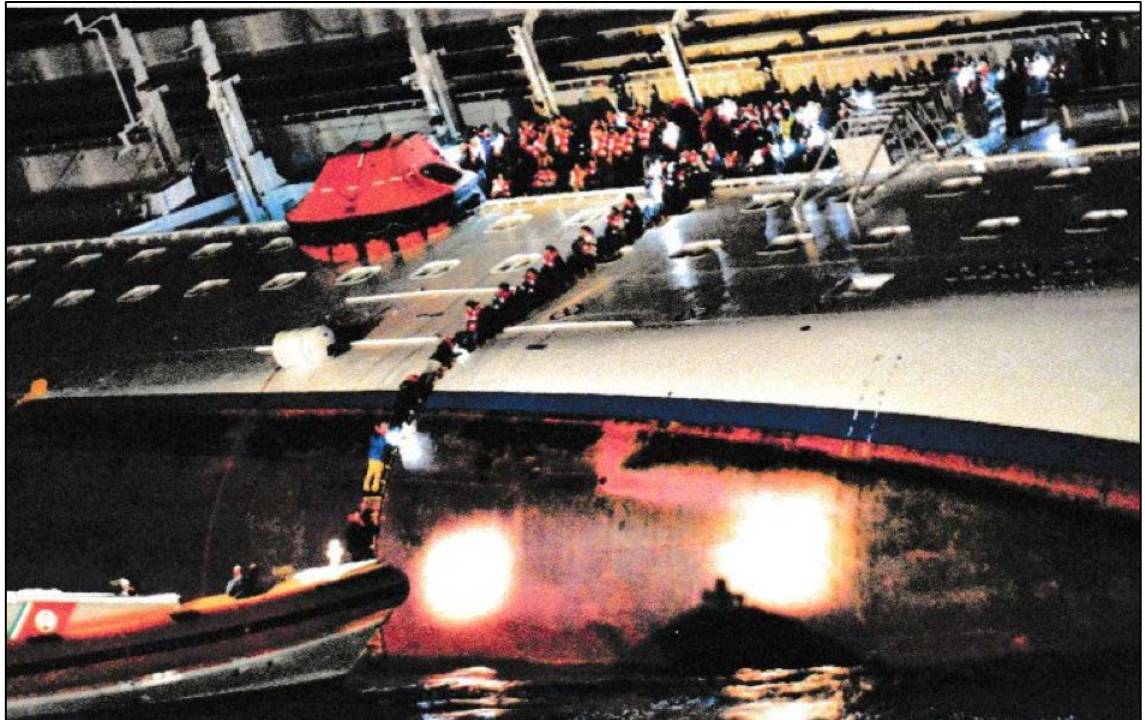


This image is taken from a document given to the author by Arne Sagen, entitled ‘*Costa Concordia: An ISM Code-based analysis of the accident 13.01.2012 – Italy’s handling of the accident undermines the safety of the cruise industry*’.

NOTE:

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.

APPENDIX 10 – *COSTA CONCORDIA* IMAGE 4



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.

APPENDIX 11 – *COSTA CONCORDIA* IMAGE 5



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 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

<p style="text-align: center;"></p> <p style="text-align: center;"><i>A Proposed and Improved Corporate Manslaughter and Corporate Homicide Act</i></p> <p>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.</p> <p>Section 1 The Offence: Corporations</p> <p>(1) An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised—</p> <ol style="list-style-type: none"> (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. <p>(2) The organisations to which this section applies are—</p> <ol style="list-style-type: none"> (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 employers' association, that is an employer. <p>(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).</p> <p>(4) For the purposes of this Act—</p> <ol style="list-style-type: none"> (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 if the conduct alleged to amount to a breach of that duty 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— <ol style="list-style-type: none"> (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. <p>Section 2 The Offence: Corporate Individuals</p> <p>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(4)(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.</p>	<p>Section 3 Sentencing</p> <p>(1) The offence under sections 1 and 2 is called—</p> <ol style="list-style-type: none"> (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. <p>(2) An organisation that is guilty of corporate manslaughter or corporate homicide under section 1 is liable on conviction on indictment to a fine.</p> <p>(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.</p> <p>(4) The offence of corporate homicide is indictable only in the High Court of Justiciary.</p> <p>Section 10 Factors for the Jury</p> <p>(1) This section applies where—</p> <ol style="list-style-type: none"> (a) it is established that an organisation owed a relevant duty of care to a person, and (b) it falls to the jury to decide whether there was a gross breach of that duty. <p>(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—</p> <ol style="list-style-type: none"> (a) how serious that failure was; (b) how much of a risk of death it posed. <p>(3) The jury should also—</p> <ol style="list-style-type: none"> (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. <p>(4) This section does not prevent the jury from having regard to any other matters they consider relevant.</p> <p>(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.</p> <p>Section 11 Defence</p> <p>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.</p>
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Only those Sections that differ from the original Corporate Manslaughter and Corporate Homicide Act are included in this Appendix.

APPENDIX 13 – TABLE OF COMPARISON (ORIGINAL & PROPOSED CORPORATE MANSLAUGHTER ACTS)

Corporate Manslaughter and Corporate Homicide Act 2007	Author's Proposed and Improved Corporate Manslaughter and Corporate Homicide Act
s. 1 The offence+3:3	s. 1 The offence: Corporations
Relevant duty of care	s. 2 The offence: Corporate Individuals
s. 2 Meaning of "relevant duty of care"	s. 3 Sentencing
s. 3 Public policy decisions, exclusively public functions and statutory inspections	Relevant duty of care
s. 4 Military activities	s. 4 Meaning of "relevant duty of care"
s. 5 Policing and law enforcement	s. 5 Public policy decisions, exclusively public functions and statutory inspections
s. 6 Emergencies	s. 6 Military activities
s. 7 Child-protection and probation functions	s. 7 Policing and law enforcement
Gross breach	s. 8 Emergencies
s. 8 Factors for jury	s. 9 Child-protection and probation functions
Remedial orders and publicity orders	Gross breach
s. 9 Power to order breach etc to be remedied	s. 10 Factors for jury
s. 10 Power to order conviction etc to be publicised	Defence
Application to particular categories of organisation	s. 11 Defence
s. 11 Application to Crown bodies	Remedial orders and publicity orders
s. 12 Application to armed forces	s. 12 Power to order breach etc to be remedied
s. 13 Application to police forces	s. 13 Power to order conviction etc to be publicised
s. 14 Application to partnerships	Application to particular categories of organisation
Miscellaneous	s. 14 Application to Crown bodies
s. 15 Procedure, evidence and sentencing	s. 15 Application to armed forces
s. 16 Transfer of functions	s. 16 Application to police forces
s. 17 DPP's consent required for proceedings	s. 17 Application to partnerships
s. 18 No individual liability	Miscellaneous
s. 19 Convictions under this Act and under health and safety legislation	s. 18 Procedure evidence and sentencing
s. 20 Abolition of liability of corporations for manslaughter at common law	s. 19 Transfer of functions
General and supplemental	s. 20 DPP's consent required for proceedings
s. 21 Power to extend section 1 to other organisations	s. 21 Convictions under this Act and under health and safety legislation
s. 22 Power to amend Schedule 1	s. 22 Abolition of liability of corporations for manslaughter at common law
s. 23 Power to extend section 2(2)	General and supplemental
s. 23A Powers of Department of Justice in Northern Ireland	s. 23 Power to extend section 1 to other organisations
s. 24 Orders	s. 24 Power to amend Schedule 1
s. 25 Interpretation	s. 25 Power to extend section 4(2)
s. 26 Minor and consequential amendments	s. 25A Powers of Department of Justice in Northern Ireland
s. 27 Commencement and savings	s. 26 Orders
s. 28 Extent and territorial application	s. 27 Interpretation
s. 29 Short title	s. 28 Minor and consequential amendments
	s. 29 Commencement and savings
	s. 30 Extent and territorial application
	s. 31 Short title

APPENDIX 14 – QUESTIONNAIRE

Statement of Consent

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

Please place a X in the box


I confirm that I have read and understand the Personal Information Sheet sent to me on _____ (insert date) for the above study 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.

Questionnaire


University of Central Lancashire | Lancashire Law School

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 consent form at the beginning of this questionnaire.

Please return your completed questionnaire via email to Cl.laverick@ucan.ac.uk or by post to:

Craig Laverick
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.

Craig Laverick BA LLB (Hons) LL.M ANU AFHEA
PhD Candidate – Lancashire Law School
University of Central Lancashire
Preston PR1 2HE
Cl.laverick@ucan.ac.uk

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 onshore 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)

APPENDIX 15 – PARTICIPANT INFORMATION SHEET

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 into 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 invite and 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 approx. 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@uclan.ac.uk
Tel: +44 (0)1772 893075

My Primary Supervisor's Contact Details

Professor Keyuan Zou
Lancashire Law School
University of Central Lancashire
Preston
PR1 2HE

Email: KZou@uclan.ac.uk
Tel: +44 (0)1772 893062

Thank you for taking the time to read this information sheet.

APPENDIX 16 – THE NAUTICAL INSTITUTE’S *SEAWAYS* LETTER

The NI out and about

 **GOT SOME NEWS?**
Let us know editor@nautinst.org

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 ro-ro ports.

Craig Laverick AMNI 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 CLaverick@uclan.ac.uk'



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.



Moving up

Captain Nikos Aslanis AFNI has been elected to the committee of Greek Shipmasters Union. He has also been appointed as an instructor at the Maria Tsakos TCM Academy. Congratulations!

NI Staff out and about

Bridget Hogan and Theresa Nelson MNI attended the Sail Training International AGM in Quebec to promote The Nautical Institute's publications and sail training scheme.

John Lloyd AFNI attended and presented at the European Dynamic Positioning Conference in London.

David Patraiko FNI attended the e-Nav 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).



Philip Wake FNI attended the RNLI Council meeting.

Harry Gale FNI and Laura Nicholls attended the launch of Seafarers' Awareness Week at Trinity House, London, as did Philip.

IMO presentation

David Squire FNI, editor of the NI's latest publication, *Human Performance and Limitation for Mariners*, gave a lunchtime presentation on the HPL concept at the IMO. The presentation was very well received, and the audience of 60 people were keen to remain after the presentation and ask questions.

Mentoring is really working!

Captain Andre Le Goubin FNI reports: 'I recently went onboard the tanker *Sestrea* under the command of Capt Konstantinos D. Geomelos AFNI, 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 understudying him wherever possible, having the 2/0 or 3/0 forward for anchoring and stations and using a common language to name just a few. The vessel is manned by Greek officers, with the exception of one engineer, one 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 powerpoint 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. But 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 have to say 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.'



Read Seaways online at www.nautinst.org/seaways

March 2016 | Seaways | 35

APPENDIX 17 – NAUTILUS’ TELEGRAPH LETTER

18 | telegraph | nautilusint.org | February 2016

YOUR LETTERS

WANTED: info on Stolwijk rescue



→ I am involved in a group who are trying to gather information regarding the rescue of 18 men from the Dutch steamer ss Stolwijk on 7 December 1940. The vessel was part of a group in an Atlantic convoy (SC 013) when it foundered on a reef off the west coast of Donegal (Eire) after losing its rudder in hurricane force conditions. The Arranmore lifeboat KTJS was called to assist and made its way 24 miles north to the stricken vessel.

Ten crewmembers of the Stolwijk perished when they attempted escape from the Stolwijk in one of the ship's lifeboats — the boat being smashed against the rocks. There was also a reported rescue attempt by a naval destroyer which ended in failure.

Demonstrating exceptional seamanship and bravery, the lifeboat crew succeeded in saving the lives of 18 men from the Stolwijk. It was later described by the RNLI as a rescue of great daring, gallantry and endurance carried out in weather of

exceptional severity. The RNLI awarded the gold medal to the lifeboat coxswain John Boyle for conspicuous gallantry and silver and bronze medals to the other lifeboat crew members for gallantry. Queen Wilhelmina of the Netherlands also awarded the lifeboat crew the Dutch gold, silver and bronze medals for exceptionally outstanding courage, unselfishness and devotion to duty.

The group's long-term plan is to gather together as much information as possible on the rescue so that it can be documented. To mark the 75th anniversary of the event, fundraising was commenced for a memorial on Arranmore to those who were involved in the rescue and to those who lost their lives that December night in 1940.

I would be interested to hear from anyone who may have information on the 28 crew members from the Stolwijk — such as names and rank, and what

became of the 18 survivors. I am hoping our Dutch colleagues may be able to help on this one as the group would be very interested to link up with any of the descendants of the Stolwijk's crew. It would be fitting if the descendants of the crew of ss Stolwijk were aware of the plans for a memorial and were involved in some way.

Also, any information on ss Stolwijk would be well received, as well as information on the naval vessel which attempted rescue before the KTJS arrived on the scene. Unconfirmed reports say it was HMS Sabre.

📧 As part of the fundraising efforts, a song about the event has been released — find out more at www.earlysbarr.com/ill-go

📷 To find us on Facebook, search for **The Stolwijk** (note spelling).

📧 For further information, please contact me: stolwijk40@gmail.com

STEVE WARD
mem no 201021

APPENDIX 18 – LIST OF NVIVO NODES

Name	Sources
▼ Section A Personal Details	25
▼ Q3 Job Role	25
Academic or researcher	7
FSA employee	3
Lawyer	2
Maritime specialist or practitioner	7
On-shore management	2
Seafarer	4
▼ Section B The ISM Code	25
▼ Q10 ISM Lacks Provisions Apportioning Blame	25
Agree - Code not intended for liability	10
Agree - criminalisation of seafarers	1
Agree - enforcement methods already in place are sufficient	3
Answer not provided	2
Disagree - the Code should be used to attribute liability and blame	10
▼ Q11 Implementation by Ship Operating Companies	25
Higher	10
Lower	5
Same	7
Unknown	3
▼ Q12 Implementation by Seafarers	25
Higher	13
Lower	5

Same	6
Unknown	1
▼ Q5 Purpose of the ISM Code	23
Accountability	3
Avoid damage to ship	4
Avoid damage to the environment	15
Defining roles and authority for safety	6
Guidance for operations	3
Highlight problems	0
Improve performance of shipping	4
Improve safety at sea and safety management	12
Prevent human loss	5
Safety awareness	1
Safety culture	2
SMS and internal rules	6
Umbrella instrument	3
▼ Q6 Positive Features	25
Accreditation	1
Best practice and harmonisation	5
Business efficiency	0
Clearly outlines authority	7
Communication	1
Comprehensive and simply written	3
DPA	6

<input type="radio"/> Enforced internationally	2
<input type="radio"/> Flexibility	1
<input type="radio"/> Human factor	1
<input type="radio"/> Increased reporting	1
<input type="radio"/> International standards	9
<input type="radio"/> Prevents damage to the environment	4
<input type="radio"/> Prevents damage to the ship	3
<input type="radio"/> Prevents human injury or loss of life	2
<input type="radio"/> Promoting reporting, auditing and continuous improvements	6
<input type="radio"/> Responsibility and accountability	8
<input type="radio"/> Risk management	3
<input type="radio"/> Safety awareness	4
<input type="radio"/> Safety culture	8
<input type="radio"/> Sharing of information internationally	2
<input type="radio"/> SMS	6
▼ <input type="radio"/> Q7 Negative Features	23
<input type="radio"/> Commercial focus	1
<input type="radio"/> Communication	1
<input type="radio"/> Complacency	1
<input type="radio"/> Confused with seaworthiness	1
<input type="radio"/> Cost	1
<input type="radio"/> Crew - familiarity with SMS	1
<input type="radio"/> Crew - training, knowledge and experience	4
<input type="radio"/> Documents can be falsified	1

<input type="radio"/> FSA and RO non-implementation	2
<input type="radio"/> Implementation by companies	5
<input type="radio"/> Implementation by seafarers	5
<input type="radio"/> Lengthy i.e. paper work and checklist exercise	13
<input type="radio"/> Minimalist approach	1
<input type="radio"/> No punishment or enforcement	1
<input type="radio"/> Not prescriptive and too vague	1
<input type="radio"/> Off-the-shelf SMS	3
<input type="radio"/> Reliance on external consultants	1
<input type="radio"/> Should have been introduced sooner	1
<input type="radio"/> SMS - varied across companies	2
<input type="radio"/> Time consuming	1
<input type="radio"/> Time issues	1
<input type="radio"/> Too strict	1
<input type="radio"/> Weakens master authority	1
▼ <input type="radio"/> Q8 Positive Impact (Internationally)	25
<input type="radio"/> No - Code increases power of companies	1
<input type="radio"/> No - displaces skills and initiatives	1
<input type="radio"/> No - evidenced by attitudes	1
<input type="radio"/> No - not used by courts	1
<input type="radio"/> Yes - evidenced by attitudes	3
<input type="radio"/> Yes - evidenced by auditing	1
<input type="radio"/> Yes - harmonised standards	2
<input type="radio"/> Yes - in addition to other factors	1

<input type="radio"/> Yes - increased safety awareness	5
<input type="radio"/> Yes - misc	3
<input type="radio"/> Yes - reduction in fatalities	2
<input type="radio"/> Yes - SMS requirement	1
<input type="radio"/> Yes but complacency is increasing	4
▼ <input type="radio"/> Q9 Positive Impact (UK)	25
<input type="radio"/> NA - UK was already operating safe ships	4
<input type="radio"/> No - increases power of companies	1
<input type="radio"/> No - waste of money	1
<input type="radio"/> Unknown	8
<input type="radio"/> Yes - evidenced by attitudes	3
<input type="radio"/> Yes - evidenced by increased inspection and enforcement	3
<input type="radio"/> Yes - evidenced by statistics and research	3
<input type="radio"/> Yes - foreign ships entering UK waters have improved	1
<input type="radio"/> Yes - SMS requirement	2
▼ <input type="radio"/> Section C Corporate Manslaughter	25
▼ <input type="radio"/> Q13 Would Individual Liability be Effective at Ensuring Compliance	25
<input type="radio"/> No - cannot see link between corporate manslaughter and ISM	3
<input type="radio"/> No - for individual States to legislate	2
<input type="radio"/> No - industrial self-regulation	1
<input type="radio"/> No - legislation already in place	4
<input type="radio"/> No - no reason given	2
<input type="radio"/> No - will only affect middle management	1
<input type="radio"/> Yes	16

▼ <input type="radio"/> Q14 Maximum Punishment	16
<input type="radio"/> Custodial sentence	9
<input type="radio"/> Fine	5
<input type="radio"/> No punishment	1
<input type="radio"/> Other	1
<input type="radio"/> Unknown	5
▼ <input type="radio"/> Q15 Alternatives to Individual Liability	16
<input type="radio"/> Do not agree with Code	1
<input type="radio"/> FSA and RO liability	2
<input type="radio"/> Naming and shaming	2
<input type="radio"/> Political and international pressure	1
<input type="radio"/> Raising awareness and improving training	4
<input type="radio"/> Stricter enforcement - PSC	5
<input type="radio"/> Unknown	1
▼ <input type="radio"/> Q16 Additional Comments	16
<input type="radio"/> Agree with balance between corporate and individual liability	2
<input type="radio"/> Corporate manslaughter and ISM interaction	2
<input type="radio"/> Criminal sanctions do not work	2
<input type="radio"/> Implementation issues	3
<input type="radio"/> Increased prosecution could mean culprits hide behind corporate veil	1
<input type="radio"/> ISM allows for better inspection and detention	1
<input type="radio"/> ISM needs to be modified so it is more applicable to the diversified business environm...	1
<input type="radio"/> Master not senior management	1
<input type="radio"/> Plea agreements and out of court settlements	1

● Punishment should have been present from the beginning	1
● Scapegoats	3
● SMS need to be simplified	1
● Support for individual liability	3

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