



Photo: Mick Holder

IN THE DOCK Demonstrators outside a November 2005 Health and Safety Commission meeting remind the watchdog it is in the business of regulation, not deregulation. It seems to be listening – it agreed there should be safety duties on company directors (page 13). www.hazards.org/commissionimpossible

with the settlement they have won in the Draft Bill for England and Wales, will pull out all stops to avoid a more accountable and punitive law. We should expect nothing less. After all, it is their members who are in the frame.

The CBI representative on the Scottish Executive Group trawled out the two oldest and least convincing arguments in the book: A tough law will provide a disincentive to the best directors; and companies will leave the country – the 'myth of capital flight' – if the risks of being caught are too high. When challenged, he failed to provide any evidence to substantiate either claim.

In 10 years of studying corporate crime and regulation, I have never come across a shred of material evidence that supports either of those arguments. Both companies and their directors have too much to lose by leaving the

country. In Canada and in Australia, there has been no capital flight since their laws were introduced. And there is no shortage of directors in those countries queuing up to receive their share options and annuities.

That said, what sort of society would want directors and companies that invest in the country for the sole reason that they can get away with killing their workers?

Time for change

Corporate lawyers in Scotland have argued existing provisions of the Health and Safety at Work Act are deterrent enough. Some point to the Transco case in which the gas supply company was prosecuted and fined a record £15m for killing a family of four (*Hazards* 92).

But a fine does not carry the same gravity as a prosecution for an offence of

violence. And the average fine for killing is not £15m, but just over £30,000, a sum that would not hurt major firms. And even the largest fines will have a negligible impact on major firms (*Hazards* 90).

The Draft Bill must be improved. We will only get one chance at this reform for a long time to come. It is important that we get it right. At the same time we must insist, as the House of Commons Select Committee has (right), that redrafting of the Draft Bill for England and Wales to give it the necessary teeth does not mean a delay in the implementation of the law.

No matter what the new law looks like, it will fail unless the Health and Safety Executive budget is increased sufficiently so every suspected case of corporate killing is properly investigated.

Corporate homicide: Expert Group Report 2005, Scottish Executive, 17 November 2005.

DRAFT BILL 'CHEATS VICTIMS'

Two powerful committees of MPs have demanded significant changes to the government's draft bill on corporate manslaughter, and warned that as currently drafted it could even make things worse for the victims of accidents at work in England and Wales.

The home affairs and work and pensions select committees joined forces to analyse the controversial legislation, which Labour first promised before the 1997 general election, but which was only published, in draft form, in 2005 (*Hazards* 90). The former minister and chair of the home affairs committee, John Denham, warned that if his proposed amendments are not incorporated into the bill, victims' relatives would "feel cheated of justice in future."

Speaking on the 20 December 2005 publication of the committees' joint report, he said: "The reform of corporate manslaughter law is long overdue. The new bill must be introduced this year, but it must take into account our recommendations if relatives of victims are not to feel cheated of justice in the future."

The report warns that the bill, as currently drafted, may let some big firms off the hook and create "perverse" incentives to treat health and safety less seriously, by allowing senior directors to delegate decisions on health and safety to more junior staff in order to avoid the danger of prosecution. And it might mean large corporations escaping prosecution over a death at one of a number of factories or sites, while a smaller company with only one factory would find itself in court over an identical incident.

The report urges the government to introduce an additional offence of "secondary liability for corporate manslaughter" to be used against individuals personally responsible for the organisation's failing. The committee also called for a broad range of possible penalties for those found guilty of corporate manslaughter, to allow courts to reflect the individual circumstances of the death.

The government says there is now insufficient parliamentary time to progress the Bill in the 2005/06 parliamentary session, so it unlikely to be implemented this year.

Draft Corporate Manslaughter Bill: Home Affairs and Work and Pensions – First report, December 2005.