The business of killing

After eight years of delays, the corporate manslaughter bill has been neutered to please employers

It is better than a poke in the eye with a sharp stick, or a tap on the head with a steam hammer. But only just. The new draft bill on corporate manslaughter is a ghost of what was once proposed. But, for the first time in the United Kingdom, there might now be a chance of prosecuting large companies for killing their workers.

No one could accuse the government of rushing. It first promised to introduce an offence of corporate killing at the 1997 Labour conference. It promised again in a Home Office consultation paper in 2000, and again in that year's Queen's speech. Nothing happened, but the promise was repeated in Labour's 2001 manifesto. In May 2003, the Home Office promised a draft bill in the autumn. That autumn, it promised one in the spring. In February 2004, it promised it would be produced in April. In April, it promised the bill would be published during the current parliamentary session. In September, Tony Blair promised that the promise would be kept. Two weeks later, the home secretary said it would come out in the autumn. Autumn, and the parliamentary session came and went. In the Queen's speech at the end of November, the government promised to publish the bill before Christmas. Soon afterwards, it promised that the bill would appear on December 21. On December 17, it confessed this wasn't going to happen, but promised it would be published during the current parliamentary session.

Astonishingly, this promise has been kept. But as the draft bill has to go out to consultation, it cannot be passed during this government, which means that the manifesto promise has been broken. Altogether, that makes 12 broken promises. I think this might be a record.

Between the 1997 Labour conference and today, almost 5,000 people have been killed in "workplace incidents". By the time the law is implemented (assuming that Labour is re-elected and that the latest promise isn't broken), another few hundred are likely to die.

The excuse the home secretary makes for these delays is that the bill deals with a "very complex area of law". Strangely, the same consideration did not stop him from rushing through the Prevention of Terrorism Act, which deals with such straightforward areas of law as convicting people before they've been tried. When a government wants something to happen, it makes it happen, whatever the complexities.

The real problem was that from the day the then home secretary opened his mouth at the 1997 conference, big business started mobilising. The government's proposal was popular, as company directors had been able to walk away without penalties from a series of spectacular disasters: the Piper Alpha explosion, the Southall rail crash and the sinking of the Herald of Free Enterprise. So bodies such as the Confederation of British Industry and the Institute of Directors had to proceed carefully. They followed what could be described as the Svejk strategy. At the beginning of Jaroslav Hasek's novel The Good Soldier Svejk, its hero, knowing that he is about to be conscripted into the Austro-Hungarian army, persuades a friend to push him into the recruiting office in a wheelchair, where he noisily volunteers for service, while making it clear that, to his enormous regret, such service is in fact impossible.

The CBI and the IoD have both been clamouring to be sent to the front line, while waving their broken legs about. Last week the IoD issued what is surely the world's most back-handed press release. "With the publication today of the draft corporate manslaughter bill, the Institute of Directors' long-running campaign for action finally seems to have paid off. The IoD has been calling for action... since early 2000." The press release goes on to welcome the two provisions that gut the bill: the guarantee that directors themselves will not be prosecuted and the promise that "no new burdens" will "be placed on companies which already comply with health and safety legislation".

The CBI, in its response to the consultation paper in 2000, loudly agreed that "the general law of manslaughter is in need of reform" and that "the public deserve reassurance that business is accountable and takes its responsibilities to society seriously." It went on to argue that "the best results will be achieved by ensuring compliance with the current law". Pressing as the need for change is, in other words, it would be better if it doesn't happen.

Every time the bill was about to be published, someone in the cabinet flinched. The chief flincher has been Jack Straw, who also happens to be the man who first proposed it, in 1997. Last October, he sent a letter to the deputy prime minister insisting, just like the CBI, that though the case for action "appears unanswerable", "there is a strong case for maintaining the current position".

And he more or less got what he asked for. In his foreword to the bill, the current home secretary, Charles Clarke, uses a phrase coined and endlessly repeated by the CBI. "It is not my intention to propose legislation that would... create a risk-averse culture." I don't know where I got the impression that the purpose of this bill was to prevent directors from taking risks with other people's lives.

So what the bill gives us is a law that will allow companies, but not the people who run them, to be prosecuted for killing their workers. At the moment, a firm can't be convicted of manslaughter unless prosecutors can prove that one of the directors was personally responsible for the death. This makes it impossible to pursue any but the smallest companies. The new law will allow firms to be convicted as long as "senior managers" were responsible for a gross breach of their duty of care towards their workers. The company can be fined. But the human beings who make the decisions are immune. As directors can still be disqualified and imprisoned for a gross breach of their duty of care towards their shareholders' investments, money will remain more valuable than human life.

Just in case the law threatens to encourage a risk-averse culture, the prosecution will have to prove that senior managers "sought to cause the organisation to profit" from their breach of duty. This, in the age of the cross-cut shredder, will in most cases be impossible. It is not clear whether the parent company can be prosecuted, or only its subsidiaries. Neither is it clear how the law can prevent senior managers from blaming junior ones for an accident, thus absolving the company of legal responsibility.

But at least something is happening, or might possibly be happening. And that, after eight years of broken promises, looks like a minor miracle.