

BRIEF UPDATE

FROM LYNNE MOSS OF THE HEALTH, SAFETY & ENVIRONMENTAL LAW DIVISION



Corporate Pre-Sentencing Background Reports

From 28th March 2011 the Scottish courts now have power to order a pre-sentencing background report into the financial affairs and structural arrangements of an organisation convicted of a breach of health and safety legislation.

The power will be available in all cases involving a conviction in a criminal prosecution of an organisation, including safety prosecutions, convictions under the Bribery Act 2010, or any other criminal offence by a corporate body. The report will be prepared by a "Reporter" appointed by the court following conviction and prior to sentencing. The court can order that the costs of commissioning and preparing the report be met by the organisation although in such circumstances the court should take account of such costs in determining the amount of any fine to be imposed.

The court may issue directions to the Reporter about the information which should be contained in the report, particular

matters to be covered in the report and the time by which the report is to be submitted to the court. This may include an order requiring the organisation to provide access to its books, documents etc. and to provide assistance when necessary. Failure to comply with this order could be treated as contempt of court.

Once prepared, a copy of the report will be sent to the court and thereafter made available to the organisation, the organisations' solicitor and the Procurator Fiscal. The court must have regard to the report when deciding which penalty or penalties should be imposed on the organisation in respect of the offence. In the event that the court decides to impose a fine, it may have regard to any information contained in the report which provides guidance on the ability of the organisation to pay a fine, including information about the parents or subsidiaries where the organisation is part of a group.

Courts can order that pre-sentencing background reports be prepared in relation to bodies corporate, unincorporated associations, partnerships, a body of trustees, a government department and a part of the Scottish Administration.

If you would like further information on this or any other aspect of Health, Safety and Environmental law please contact any member of the P&W HSE team:

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