

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Sentencing

Section 22 – Pre-sentencing reports about organisations

103. This section inserts a new section 203A in the Criminal Procedure (Scotland) Act 1995 and will apply when an organisation is convicted of an offence. This will allow the court to order a pre-sentencing background report into the financial affairs and structural arrangements of an organisation before dealing with the organisation in respect of the offence. The power will be available both in summary and solemn cases.
104. The report will be prepared by a person appointed by the court and will be referred to as the ‘reporter’. The court may also issue directions to the reporter about the information 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 will also enable the court to make 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.
105. The reporter’s costs in preparing the report will be paid by the clerk of court in the first instance. However, the court may order the organisation to reimburse to the clerk all or a part of those costs. An order to pay the costs of the report to the court may be enforced by civil diligence as if it were a fine.
106. On receipt of the report, the clerk of the court must provide a copy to the organisation, the organisation’s solicitor (if any) and the prosecutor. The court must also have regard to the report in deciding how to deal with the organisation in respect of the offence. If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to the report and the cost of the report, if the organisation has to reimburse the clerk of the court for its preparation. If the court decides to fine the organisation and to seek reimbursement for preparing the report, any payment by the organisation will be first applied to the preparation of the report.
107. If the court makes a compensation order in respect of the offence, any payment will first be made in satisfaction of the compensation order before consideration of payment for the preparation of the report or a fine.
108. ‘Organisation’ will have the same meaning as in section 307(1) (interpretation) of the Criminal Procedure (Scotland) Act 1995. This includes, among others, bodies corporate, partnerships and government departments.