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from the Health & Safety Division

New Sanctions for Safety Offences



Last week the Scottish Parliament issued a consultation document on a new bill which would allow Courts to impose equity fines on companies convicted of criminal offences, including breaches of the Health and Safety at Work Act 1974 and Corporate Homicide. An equity fine differs from a normal fine in that rather than making a cash payment the company is required to issue shares to a value specified by the Court. The shares are then sold and the proceeds of sale paid to the Court. The intention is that the fine be fixed as a percentage of the company's equity value rather than being based on turnover, and would reduce the value of a company as a whole rather than its cash reserves.

The proposed bill resurrects the proposals of the Scottish Parliament's Expert Group in relation to sanctions for a Scottish offence of corporate homicide. These were dropped when the Westminster Parliament announced that it was introducing UK wide legislation in the form of the Corporate Manslaughter and Corporate Homicide Act 2007.

The new bill also proposes that prior to sentencing, a Court may order a company background enquiry report to look at the

financial health of a company and consider the circumstances of any previous convictions or enforcement action. The costs associated with completion of the background enquiry report are to be borne by the company.

The new bill has the backing of a number of pressure groups and trade unions. It is not clear whether it has the backing of the Scottish Government.

Copies of the consultation document can be obtained from the Paul & Williamson's Health and Safety Division or from the Scottish Parliament website:-

www.scottish.parliament.uk/s3/bills/MembersBills.

The consultation closes on 1 December 2008.

Health & Safety (Offences) Bill 2007-08

In May, we drew your attention to a new bill in the House of Commons which introduced imprisonment as a sanction for most safety offences. That bill passed its second reading in the House of Lords in July and is due for a final reading in October. It is now clear that the bill has significant support in both Houses and the prospect of imprisonment being introduced as a sanction is greater now than at any time in the past. Individuals can be convicted of offences under Section 7 and Section 37 of the Health and Safety at Work Act 1974 where their behaviour endangers other workers or, in the case of directors and other officers if their consent, connivance or neglect led to a company breaching the legislation. Sole traders and other individuals with employees could also face imprisonment for breaches of their general duties under Sections 2 and 3 of the 1974 Act.

For further information on either of these matters, please contact Rona Jamieson or Jennifer Hunter:

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