

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

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Annual Report and
provision of
information to
Minister.

71.—(1) No later than 3 months after the end of each calendar year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.

(2) A report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.

(3) The Review Group shall, if so requested by the Minister, provide a report to the Minister on any matter—

(a) concerning the functions or activities of the Review Group,
or

(b) referred by the Minister to the Review Group for its advice.

PART 8

AUDITORS

Amendment of
section 187 of Act
of 1990.

72.—Section 187 of the Act of 1990 is amended—

(a) in subsection (1)(a)(iii), by the insertion after “Principal Act” of “and holds a valid practising certificate from such a body”, and

(b) by the insertion of the following after subsection (11):

“(12) (a) The Director may demand of a person acting as an auditor of a company or as a public auditor, or purporting to be qualified to so act, the production of evidence of his qualifications under subsection (1) in respect of any time or period during which he so acted or purported to be qualified to so act, and if the person refuses or fails to produce the evidence within 30 days of the demand, or such longer period as the Director may allow, he shall be guilty of an offence.

(b) In a prosecution for an offence under this subsection, it shall be presumed, until the contrary is shown by the defendant, that the defendant did not, within 30 days, or any longer period allowed, after the day on which the production was demanded, produce evidence in accordance with paragraph (a).

(13) (a) Where a person is the subject of a prosecution under subsection (9) for a contravention of subsection (6) or (7), it shall be sufficient evidence, until the contrary is shown by the person, of non-membership of a body of accountants for the time being recognised by the Minister for the purposes of this section for any or all such bodies to certify in writing to the court such non-membership, provided that the first-mentioned person is provided by the prosecutor with a copy of the certificate or certificates, served by registered post, not

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later than 21 days before any such certificate is presented in evidence to the court. Pr.8 S.72

- (b) Where a person the subject of a prosecution proposes to contest the certification of non-membership contained in a certificate provided for by paragraph (a), he shall give written notice thereof, served by registered post, to the prosecutor within 21 days, or such longer period as the court may allow, of receipt of the certificate from the prosecutor.”.

73.—Section 192 of the Act of 1990 is amended by the insertion of the following after subsection (5): Amendment of section 192 of Act of 1990.

“(6) Where a disciplinary committee or tribunal (however called) of a body of accountants recognised for the purposes of section 187 has reasonable grounds for believing that an indictable offence under the Companies Acts may have been committed by a person while the person was a member of the body, the body shall, as soon as possible, provide a report to the Director giving details of the alleged offence and shall furnish the Director with such further information in relation to the matter as the Director may require.

(7) Where a body referred to in subsection (6) fails to comply with that subsection or a requirement of the Director under that subsection, it, and every officer of the body to whom the failure is attributable, shall be guilty of an offence.”.

74.—Section 194 of the Act of 1990 is amended—

Amendment of section 194 of Act of 1990 — Duty of auditors if proper books of account not being kept or other offences suspected.

(a) in subsection (1), by the substitution of the following for paragraph (a):

“(a) as soon as may be, by recorded delivery, serve a notice in writing on the company stating their opinion, and”.

(b) in subsection (1)(b), by the insertion after “form of the notice” of “and the registrar shall forthwith forward a copy of the notice to the Director”.

(c) by the insertion of the following after subsection (3):

“(3A) Where the auditors of a company file a notice pursuant to subsection (1)(b), they shall, if requested by the Director—

(a) furnish to the Director such information, including an explanation of the reasons for their opinion that the company had contravened section 202, and

(b) give to the Director such access to documents, including facilities for inspecting and taking copies,

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being information or documents in their possession or control and relating to the matter the subject of the notice, as the Director may require.

(3B) Any written information given in response to a request of the Director under subsection (3A) shall in all legal proceedings be admissible without further proof, until the contrary is shown, as evidence of the facts stated therein.”

(d) in subsection (4), by the substitution for “subsection (1)” of “subsection (1), (3A) or (5)”, and

(e) by the insertion of the following after subsection (4):

“(5) Where, in the course of, and by virtue of, their carrying out an audit of the accounts of the company, information comes into the possession of the auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed an indictable offence under the Companies Acts, the auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with details of the grounds on which they have formed that opinion.

(6) No professional or legal duty to which an auditor is subject by virtue of his appointment as an auditor of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, an auditor, by reason of his compliance with an obligation imposed on him by or under this section.”.

PART 9

TRANSACTIONS INVOLVING DIRECTORS

Amendment of section 25 of Act of 1990. **75.**—Section 25 of the Act of 1990 is amended by the insertion of the following after subsection (3):

“(3A) For the purposes of this Part, a lease of land which reserves a nominal annual rent of not more than £10 is not a credit transaction where a company grants the lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the company.”.

Amendment of section 26 of Act of 1990. **76.**—Section 26 of the Act of 1990 is amended—

(a) by the substitution of the following for subsection (1):

“(1) For the purposes of this Part, a person is connected with a director of a company if, but only if, the person (not being himself a director of the company) is—

(a) that director’s spouse, parent, brother, sister or child;

(b) a person acting in his capacity as the trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls;
or