

editorial

Policing Companies

In a recent interview with *BLR* (May, p 143) the Chairman of the Council for the Securities Industry, Patrick Neill QC, underlined the initiative of the CSI in persuading the Secretary of State for Trade to set up a review of the system of Department of Trade inspections and prosecutions. In the words of Mr Neill, the Council went to the Secretary of State "asking him to see whether they can speed matters up, to improve the whole process" (the Council's detailed recommendations were reported at *BLR*, February, p 45).

The concern of the CSI was echoed by the legal and accountancy professions and towards the end of May the Secretary of State, Mr John Nott, announced in Parliament that changes were indeed to be made (see *BLR*, June, p 161). In future, consideration will be given as to whether the particular matter warrants the full appointment of inspectors or whether instead a departmental investigation under s 109 of the Companies Act 1967 would produce sufficient information to make a decision as to prosecution or the desirability of petitioning for a winding-up, thus saving time and expense.

Inspectors will generally be given a 12 month time-scale for the production of their report (the CSI recommended a six month time limit) and the Department will be more precise and selective in the terms of reference given. The full proposals involve legislation and we are likely to see a Bill (including also the companies registration and business name proposals) towards the end of the year; it remains to be seen how great the improvements will be in practice.

The inspection system is, however, but one aspect of the policing of company fraud and irregularities. The inordinate length and expense of criminal fraud trials has also attracted government concern recently and it has been suggested that this problem could be alleviated by prosecuting only the principal offenders in a corporate fraud and leaving on the file the cases of those

involved more marginally. This approach accords with the current approach to trimming public expenditure though there still remains a need to deter those involved on the fringes of fraud since without their assistance it would often not be possible to get a fraudulent scheme off the ground.

Another important aspect is the way in which the police conduct fraud investigations. At page 188 of this edition we publish a review of the system for policing fraud in West Germany; there would seem to be much that the UK could learn from this approach, in particular the need to recognise the specialist character of such police work.

Insider Dealing

This review of the "policing" of company activities would not be complete at this particular time without referring also to Part V of the recently enacted Companies Act 1980 which came into force on June 23 and which imposes prohibitions on insider dealing in company securities. The Stock Exchange and the CSI made it clear to the Government that while they generally favoured self-regulation in securities markets, they supported making insider dealing a criminal offence. When the idea of outlawing insider dealing was resurrected in draft clauses published in July 1978, concern was expressed that the proposals could seriously hamper the work of stockbrokers' investment analysts who commonly obtain detailed information on companies which, while available from the company on request in appropriate circumstances, has not been generally published. The provisions as finally enacted seem no longer to pose this problem (mainly because of the way "unpublished price sensitive information" is defined in s 73(2)). While the provisions contain some "loopholes" it would be premature to criticise them before they have had some opportunity to prove themselves in the marketplace; certainly most kinds of improper market conduct have been covered by the provisions.