

SCHEDULES

SCHEDULE 6

Article 28.

THE CERTIFICATION OFFICER

Introduction

1. The Industrial Relations (Northern Ireland) Order 1992 shall be amended as provided by paragraphs 2 to 5.

Offenders

2.—(1) Article 13C (application to Certification Officer or court for declaration of breach of duty to secure positions not held by certain offenders) shall be amended as follows.

(2) In paragraph (2) (Certification Officer’s powers and duties) insert before sub-paragraph (a)—
“(aa) shall make such enquiries as he thinks fit.”.

(3) In paragraph (2)(a) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “, where he considers it appropriate.”.

(4) Omit paragraphs (3) and (4) (different applications in respect of the same matter).

(5) After paragraph (5) insert—

“(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as maybe specified in the order such steps to remedy the declared failure as may be so specified.

(5B) The following provisions have effect if a person applies to the Certification Officer under this Article in relation to an alleged failure—

(a) that person may not apply to the High Court under this Article in relation to that failure;

(b) on an application by a different person to the High Court under this Article in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court’s notice.

(5C) The following provisions have effect if a person applies to the High Court under this Article in relation to an alleged failure—

(a) that person may not apply to the Certification Officer under this Article in relation to that failure;

(b) on an application by a different person to the Certification Officer under this Article in relation to that failure, the Certification Officer shall have regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer’s notice.”.

(6) In paragraph (6) (entitlement to enforce order) after “been made” insert “under paragraph (5) or (5A)”.

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(7) After paragraph (6) insert—

“(7) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.”.

Accounting records

3.—(1) Article 37 (remedy for failure to comply with request for access to accounting records) shall be amended as follows.

(2) In paragraph (7) (application to the court) for the words “for an order under this Article; and where, on such an application” substitute “or to the Certification Officer; and where, on an application to it” and for “that person” substitute “the applicant”.

(3) After paragraph (7) insert—

“(7A) On an application to him the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b) give the applicant and the trade union an opportunity to be heard.

(7B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant—

(a) is allowed to inspect the records requested,

(b) is allowed to be accompanied by an accountant when making the inspection of those records, and

(c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

(7C) In exercising his functions under this Article the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.”.

(4) In paragraph (8) (court’s power to grant interlocutory relief) after “an application” insert “to it”.

(5) After paragraph (8) insert—

“(8A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8B) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(8C) If a person applies to the High Court under this Article in relation to an alleged failure he may not apply to the Certification Officer under this Article in relation to that failure.

(8D) If a person applies to the Certification Officer under this Article in relation to an alleged failure he may not apply to the High Court under this Article in relation to that failure.”.

Procedure before, and appeals from, Certification Officer

4.—(1) Article 70 (procedure before, and appeals from, Certification Officer) shall be amended as follows.

(2) In paragraph (1) omit the words from “and, without prejudice” to the end.

(3) After paragraph (1) insert—

“(1A) He shall in particular make provision about the disclosure, and restriction of the disclosure, of the identity of an individual who has made or is proposing to make any such application or complaint.

(1B) Provision under paragraph (1A) shall be such that if the application or complaint relates to a trade union—

- (a) the individual’s identity is disclosed to the union unless the Certification Officer thinks the circumstances are such that it should not be so disclosed;
- (b) the individual’s identity is disclosed to such other persons (if any) as the Certification Officer thinks fit.”.

(4) After paragraph (3) insert—

“(4) An appeal lies to the Court of Appeal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under—

- (a) Article 13C or 37 of this Order;
- (b) Article 5, Article 22, Part V, Article 84 or Part VIA of the Trade Union and Labour Relations (Northern Ireland) Order 1995.”.

5. After Article 70 there shall be inserted—

“Vexatious litigants

70A.—(1) The Certification Officer may refuse to entertain any application or complaint made to him under a provision of—

- (a) this Order; or
- (b) Parts II to VIA of the Trade Union and Labour Relations (Northern Ireland) Order 1995,

by a vexatious litigant.

(2) The Certification Officer must give reasons for such a refusal.

(3) Paragraph (1) does not apply to a complaint under Article 12E(1)(b) or to an application under Article 5 or 6 or paragraph 30 of Schedule 1.

(4) For the purposes of paragraph (1) a vexatious litigant is a person who is the subject of—

- (a) an order which is made under section 32 of the Judicature (Northern Ireland) Act 1978,
- (b) an order which is made under section 33(1) of the Employment Tribunals Act 1996 and which remains in force,
- (c) a civil proceedings order or an all proceedings order which is made under section 42(1) of the Supreme Court Act 1981 and which remains in force, or

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- (d) an order which is made under section 1 of the Vexatious Actions (Scotland) Act 1898.

Vexatious litigants: applications disregarded

70B.—(1) For the purposes of a relevant enactment an application to the Certification Officer shall be disregarded if—

- (a) it was made under a provision mentioned in the relevant enactment, and
 - (b) it was refused by the Certification Officer under Article 70A(1).
- (2) The relevant enactments are—
- (a) Articles 13C(5B) and 37(8D); and
 - (b) Articles 6(8), 23(8), 46A(10), 56(8) and 90A(14) of the Trade Union and Labour Relations (Northern Ireland) Order 1995.”.

6. The Trade Union and Labour Relations Order shall be amended as provided by the following provisions of this Schedule.

Register of members

7. In Article 3 (duty to maintain register of members' names and addresses) the second sentence of paragraph (6) (application to Certification Officer does not prevent application to High Court) shall be omitted.

8. In Article 4 (securing confidentiality of register during ballots) the second sentence of paragraph (6) (application to Certification Officer does not prevent application to High Court) shall be omitted.

9.—(1) Article 5 (application to Certification Officer for declaration of breach of duty regarding register of members' names and addresses) shall be amended as follows.

(2) In paragraph (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate,”.

(3) After paragraph (5) insert—

“(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

(5B) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.”.

(4) After paragraph (8) insert—

“(9) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(10) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(11) The following provisions have effect if a person applies under Article 6 in relation to an alleged failure—

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- (a) that person may not apply under this Article in relation to that failure;
- (b) on an application by a different person under this Article in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the High Court regarding that failure and brought to the Certification Officer's notice."

10.—(1) Article 6 (application to High Court for declaration of breach of duty regarding register of members' names and addresses) shall be amended as follows.

(2) Omit paragraph (2) (position where application in respect of the same matter has been made to Certification Officer).

(3) After paragraph (7) insert—

“(8) The following provisions have effect if a person applies under Article 5 in relation to an alleged failure—

- (a) that person may not apply under this Article in relation to that failure;
- (b) on an application by a different person under this Article in relation to that failure, the High Court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.”

Elections

11. In Article 21 (remedy for failure to comply with the duty regarding elections) the second sentence of paragraph (1) (application to Certification Officer does not prevent application to court) shall be omitted.

12.—(1) Article 22 (application to Certification Officer for declaration of breach of duty regarding elections) shall be amended as follows.

(2) In paragraph (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate,”.

(3) After paragraph (5) insert—

“(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of an election in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Part and such other provisions as may be made by the order.

(5C) Where an enforcement order has been made—

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- (a) any person who is a member of the union and was a member at the time the order was made, or
 - (b) any person who is or was a candidate in the election in question,
- is entitled to enforce obedience to the order as if he had made the application on which the order was made.”.
- (4) After paragraph (7) insert—
- “(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.
 - (9) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.
 - (10) The following provisions have effect if a person applies under Article 23 in relation to an alleged failure—
 - (a) that person may not apply under this Article in relation to that failure;
 - (b) on an application by a different person under this Article in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the High Court regarding that failure and brought to the Certification Officer’s notice.”.

13.—(1) Article 23 (application to High Court for declaration of failure to comply with requirements regarding elections) shall be amended as follows.

(2) Omit paragraph (2) (position where application in respect of the same matter has been made to the Certification Officer).

- (3) After paragraph (7) insert—
- “(8) The following provisions have effect if a person applies under Article 22 in relation to an alleged failure—
 - (a) that person may not apply under this Article in relation to that failure;
 - (b) on an application by a different person under this Article in relation to that failure, the High Court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court’s notice.”.

Application of funds for political objects

14. After Article 46 there shall be inserted—

“Application of funds in breach of Article 45

46A.—(1) A person who is a member of a trade union and who claims that it has applied its funds in breach of Article 45 may apply to the Certification Officer for a declaration that it has done so.

- (2) On an application under this Article the Certification Officer—
- (a) shall make such enquiries as he thinks fit,
 - (b) shall give the applicant and the union an opportunity to be heard,
 - (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (d) may make or refuse the declaration asked for,

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- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing, and
 - (f) may make written observations on any matter arising from, or connected with, the proceedings.
- (3) If he makes a declaration he shall specify in it—
- (a) the provisions of Article 45 breached, and
 - (b) the amount of the funds applied in breach.
- (4) If he makes a declaration and is satisfied that the union has taken or agreed to take steps with a view to—
- (a) remedying the declared breach, or
 - (b) securing that a breach of the same or any similar kind does not occur in future,
- he shall specify those steps in making the declaration.
- (5) If he makes a declaration he may make such order for remedying the breach as he thinks just under the circumstances.
- (6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- (7) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.
- (8) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.
- (10) If a person applies to the Certification Officer under this Article in relation to an alleged breach he may not apply to the High Court in relation to the breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.
- (11) If—
- (a) a person applies to the High Court in relation to alleged breach, and
 - (b) the breach is one in relation to which he could have made an application to the Certification Officer under this Article,
- he may not apply to the Certification Officer under this Article in relation to the breach.”.

Political ballot rules

15. In Article 54 (remedy for failure to comply with political ballot rules) the second sentence of paragraph (1) (application to Certification Officer does not prevent application to High Court) shall be omitted.

16.—(1) Article 55 (application to Certification Officer for declaration of failure to comply with political ballot rules) shall be amended as follows.

(2) In paragraph (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate.”.

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(3) After paragraph (5) insert—

“(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of a ballot in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh ballot, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union’s political ballot rules and such other provisions as may be made by the order.

(5C) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.”.

(4) After paragraph (7) insert—

“(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(9) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(10) The following provisions have effect if a person applies under Article 56 in relation to a matter—

- (a) that person may not apply under this Article in relation to that matter;
- (b) on an application by a different person under this Article in relation to that matter, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the High Court regarding that matter and brought to the Certification Officer’s notice.”.

17.—(1) Article 56 (application to court for declaration of failure to comply with political ballot rules) shall be amended as follows.

(2) Omit paragraph (2) (position where application in respect of the same matter has been made to Certification Officer).

(3) After paragraph (7) insert—

“(8) The following provisions have effect if a person applies under Article 55 in relation to a matter—

- (a) that person may not apply under this Article in relation to that matter;
- (b) on an application by a different person under this Article in relation to that matter, the High Court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that matter and brought to the court’s notice.”.

Political fund

18.—(1) Article 57 (rules as to political fund) shall be amended as follows.

(2) After paragraph (2) insert—

“(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.”.

(3) After paragraph (3) insert—

“(3A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.”.

Employers' associations

19.—(1) In Article 72(2) (provisions about application of funds for political objects to apply to unincorporated employers' associations) at the beginning insert “Subject to paragraphs (3) to (6),”.

(2) After Article 72(2) insert—

“(3) Paragraph (1) does not apply to these provisions—

(a) Article 46A;

(b) in Article 55, paragraphs (5A) to (5C) and (8) to (10);

(c) in Article 56, paragraph (8).

(4) In its application to an unincorporated employers' association, Article 54 shall have effect as if at the end of paragraph (1) there were inserted—

“The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.”.

(5) In its application to an unincorporated employers' association, Article 55(2)(b) shall have effect as if the words “where he considers it appropriate,” were inserted at the beginning.

(6) In its application to an unincorporated employers' association, Article 56 shall have effect as if after paragraph (1) there were inserted—

“(2) If an application in respect of the same matter has been made to the Certification Officer, the High Court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.”.

Amalgamation or transfer of engagements

20.—(1) Article 84 (complaints about procedure relating to amalgamation or transfer of engagements) shall be amended as follows.

(2) After paragraph (2) insert—

“(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.”.

(3) After paragraph (5) insert—

“(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which

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that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(7) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(8) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.”.

21. In Article 90 (provisions about amalgamations and similar matters to apply to unincorporated employers' associations) in paragraph (2)(c) after “82(3)” there shall be inserted “and 84(2A) and (6) to (9)”.

Breach of union rules

22. After Part VI there shall be inserted—

**“PART VIA
BREACH OF RULES**

Right to apply to Certification Officer

90A.—(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in paragraph (2) may apply to the Certification Officer for a declaration to that effect, subject to paragraphs (3) to (7).

(2) The matters are—

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Department.

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(4) A person may not apply under paragraph(1) in relation to a claim if he is entitled to apply under Article 55 in relation to the claim.

(5) No application may be made regarding—

- (a) the dismissal of an employee of the union;
- (b) disciplinary proceedings against an employee of the union.

(6) An application must be made—

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or

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- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph (7).
- (7) Those days are—
 - (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.
- (8) The reference in paragraph (1) to the rules of a union includes references to the rules of any branch or section of the union.
- (9) In paragraph (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (10) For the purposes of paragraph (2)(d) a committee is an executive committee if—
 - (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,
 - (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or
 - (c) it is a sub-committee of a committee falling within sub-paragraph (a) or (b).
- (11) For the purposes of paragraph (2)(d) a decision-making meeting is—
 - (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or
 - (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.
- (12) For the purposes of paragraphs (10) and (11), in relation to the trade union concerned—
 - (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;
 - (b) a major constituent body is such a body which has more than 1,000 members.
- (13) No order shall be made under paragraph (2)(e) unless a draft of it has been laid before and approved by resolution of the Assembly.
- (14) If a person applies to the Certification Officer under this Article in relation to an alleged breach or threatened breach he may not apply to the High Court in relation to the breach or threatened breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer’s decision on the application to him.
- (15) If—
 - (a) a person applies to the High Court in relation to an alleged breach or threatened breach, and
 - (b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this Article,he may not apply to the Certification Officer under this Article in relation to the breach or threatened breach.

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Declarations and orders

90B.—(1) The Certification Officer may refuse to accept an application under Article 90A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under Article 90A the Certification Officer—

- (a) shall make such enquiries as he thinks fit,
- (b) shall give the applicant and the union an opportunity to be heard,
- (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
- (d) may make or refuse the declaration asked for, and
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (3)(a) specify the period within which the union is to comply with the requirement.

(5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(6) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(8) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(9) An order under Article 90A(2)(e) may provide that, in relation to an application under Article 90A with regard to a prescribed matter, the preceding provisions of this Article shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under Article 90A(2)(e) as is prescribed under this paragraph.”.

23. In Article 149(2) (regulations and orders) after “Article 1(2)” insert “, 90A(2)(e)”.