

SCHEDULES

SCHEDULE 6

Section 29.

THE CERTIFICATION OFFICER

Introduction

- 1 The Trade Union and Labour Relations (Consolidation) Act 1992 shall be amended as provided by this Schedule.

Register of members

- 2 In section 24 (duty to maintain register of members' names and addresses) the second sentence of subsection (6) (application to Certification Officer does not prevent application to court) shall be omitted.

- 3 In section 24A (securing confidentiality of register during ballots) the second sentence of subsection (6) (application to Certification Officer does not prevent application to court) shall be omitted.

- 4 (1) Section 25 (application to Certification Officer for declaration of breach of duty regarding register of members' names and addresses) shall be amended as follows.

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

- (3) After subsection (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 subsection (8) insert—

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

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

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- (11) The following paragraphs have effect if a person applies under section 26 in relation to an alleged failure—
- (a) that person may not apply under this section in relation to that failure;
 - (b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due 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.”
- 5 (1) Section 26 (application to court for declaration of breach of duty regarding register of members' names and addresses) shall be amended as follows.
- (2) Omit subsection (2) (position where application in respect of the same matter has been made to Certification Officer).
- (3) After subsection (7) insert—
- “(8) The following paragraphs have effect if a person applies under section 25 in relation to an alleged failure—
- (a) that person may not apply under this section in relation to that failure;
 - (b) on an application by a different person under this section 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.”

Accounting records

- 6 (1) Section 31 (remedy for failure to comply with request for access to accounting records) shall be amended as follows.
- (2) In subsection (1) after “the court” insert “or to the Certification Officer”.
- (3) In subsection (2) (court to make order if claim well-founded) after “Where” insert “on an application to it” and for “that person” substitute “the applicant”.
- (4) After subsection (2) insert—
- “(2A) 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.
- (2B) 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.

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- (2C) In exercising his functions under this section 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.”
- (5) In subsection (3) (court’s power to grant interlocutory relief) after “an application” insert “to it”.
- (6) After subsection (3) insert—
- “(4) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, 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.
- (5) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.
- (6) If a person applies to the court under this section in relation to an alleged failure he may not apply to the Certification Officer under this section in relation to that failure.
- (7) If a person applies to the Certification Officer under this section in relation to an alleged failure he may not apply to the court under this section in relation to that failure.”

Offenders

- 7 (1) Section 45C (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 subsection (2) (Certification Officer’s powers and duties) insert before paragraph (a)—
- “(aa) shall make such enquiries as he thinks fit,”
- (3) In subsection (2)(a) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “, where he considers it appropriate,”.
- (4) Omit subsections (3) and (4) (different applications in respect of the same matter).
- (5) After subsection (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 may be specified in the order such steps to remedy the declared failure as may be so specified.
- (5B) The following paragraphs have effect if a person applies to the Certification Officer under this section in relation to an alleged failure—
- (a) that person may not apply to the court under this section in relation to that failure;
- (b) on an application by a different person to the court under this section in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the

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Certification Officer regarding that failure and brought to the court’s notice.

(5C) The following paragraphs have effect if a person applies to the court under this section in relation to an alleged failure—

- (a) that person may not apply to the Certification Officer under this section in relation to that failure;
- (b) on an application by a different person to the Certification Officer under this section 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 subsection (6) (entitlement to enforce order) after “been made” insert “under subsection (5) or (5A)”.

(7) After subsection (6) insert—

“(7) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, 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 section may be relied on as if it were a declaration made by the court.

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

Trade union administration: appeals

8 After section 45C there shall be inserted—

“45D Appeals from Certification Officer

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 25, 31 or 45C.”

Elections

9 In section 54 (remedy for failure to comply with the duty regarding elections) the second sentence of subsection (1) (application to Certification Officer does not prevent application to court) shall be omitted.

10 (1) Section 55 (application to Certification Officer for declaration of breach of duty regarding elections) shall be amended as follows.

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

(3) After subsection (5) insert—

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“(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 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 Chapter and such other provisions as may be made by the order.

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

- (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 subsection (7) insert—

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

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

(10) The following paragraphs have effect if a person applies under section 56 in relation to an alleged failure—

- (a) that person may not apply under this section in relation to that failure;
- (b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due 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.”

11 (1) Section 56 (application to court for declaration of failure to comply with requirements regarding elections) shall be amended as follows.

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

(3) After subsection (7) insert—

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“(8) The following paragraphs have effect if a person applies under section 55 in relation to an alleged failure—

- (a) that person may not apply under this section in relation to that failure;
- (b) on an application by a different person under this section 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.”

12 After section 56 there shall be inserted—

“56A Appeals from Certification Officer

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 55.”

Application of funds for political objects

13 After section 72 there shall be inserted—

“72A Application of funds in breach of section 71

- (1) A person who is a member of a trade union and who claims that it has applied its funds in breach of section 71 may apply to the Certification Officer for a declaration that it has done so.
- (2) On an application under this section 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,
 - (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 section 71 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.

Status: This is the original version (as it was originally enacted).

- (6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, 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 section may be relied on as if it were a declaration made by the court.
- (8) Where an order has been made under this section, 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 section may be enforced in the same way as an order of the court.
- (10) If a person applies to the Certification Officer under this section in relation to an alleged breach he may not apply to the court in relation to the breach; but nothing in this subsection 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 court in relation to an alleged breach, and
 - (b) the breach is one in relation to which he could have made an application to the Certification Officer under this section,he may not apply to the Certification Officer under this section in relation to the breach.”

Political ballot rules

- 14 In section 79 (remedy for failure to comply with political ballot rules) the second sentence of subsection (1) (application to Certification Officer does not prevent application to court) shall be omitted.
- 15 (1) Section 80 (application to Certification Officer for declaration of failure to comply with political ballot rules) shall be amended as follows.
 - (2) In subsection (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate.”.
 - (3) After subsection (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;

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- (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 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 subsection (7) insert—

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

- (9) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

- (10) The following paragraphs have effect if a person applies under section 81 in relation to a matter—

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

- 16 (1) Section 81 (application to court for declaration of failure to comply with political ballot rules) shall be amended as follows.

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

- (3) After subsection (7) insert—

“(8) The following paragraphs have effect if a person applies under section 80 in relation to a matter—

- (a) that person may not apply under this section in relation to that matter;
- (b) on an application by a different person under this section in relation to that matter, the 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.”

Status: This is the original version (as it was originally enacted).

Political fund

- 17 (1) Section 82 (rules as to political fund) shall be amended as follows.
- (2) After subsection (2) insert—
- “(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.”
- (3) After subsection (3) insert—
- “(3A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, 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.”

Amalgamation or transfer of engagements

- 18 (1) Section 103 (complaints about procedure relating to amalgamation or transfer of engagements) shall be amended as follows.
- (2) After subsection (2) insert—
- “(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.”
- (3) After subsection (5) insert—
- “(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, 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 section may be relied on as if it were a declaration made by the court.
- (8) Where an order has been made under this section, 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 section may be enforced in the same way as an order of the court.”

Breach of union rules

- 19 In Part I, after Chapter VII there shall be inserted—

“CHAPTER VIIA

BREACH OF RULES

108A Right to apply to Certification Officer

- (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 subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (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 Secretary of State.
- (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 subsection (1) in relation to a claim if he is entitled to apply under section 80 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
 - (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 subsection (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 subsection (1) to the rules of a union includes references to the rules of any branch or section of the union.
- (9) In subsection (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (10) For the purposes of subsection (2)(d) a committee is an executive committee if—

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- (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 paragraph (a) or (b).
- (11) For the purposes of subsection (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 subsections (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) Any order under subsection (2)(e) shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (14) If a person applies to the Certification Officer under this section in relation to an alleged breach or threatened breach he may not apply to the court in relation to the breach or threatened breach; but nothing in this subsection 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 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 section,he may not apply to the Certification Officer under this section in relation to the breach or threatened breach.

108B Declarations and orders

- (1) The Certification Officer may refuse to accept an application under section 108A 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 section 108A the Certification Officer—

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- (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 subsection (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 section, 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 section may be relied on as if it were a declaration made by the 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 section may be enforced in the same way as an order of the court.
- (9) An order under section 108A(2)(e) may provide that, in relation to an application under section 108A with regard to a prescribed matter, the preceding provisions of this section shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under section 108A(2)(e) as is prescribed under this subsection.

108C Appeals from Certification Officer

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under this Chapter.”

Status: This is the original version (as it was originally enacted).

Employers' associations

- 20 (1) Section 132 (provisions about application of funds for political objects to apply to unincorporated employers' associations) shall be amended as follows.
- (2) For “The” substitute “(1) Subject to subsections (2) to (5), the”.
- (3) After subsection (1) (as created by sub-paragraph (2)) insert—
- “ (2) Subsection (1) does not apply to these provisions—
- (a) section 72A;
- (b) in section 80, subsections (5A) to (5C) and (8) to (10);
- (c) in section 81, subsection (8).
- (3) In its application to an unincorporated employers' association, section 79 shall have effect as if at the end of subsection (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 court in respect of the same matter.”
- (4) In its application to an unincorporated employers' association, section 80(2) (b) shall have effect as if the words “where he considers it appropriate,” were inserted at the beginning.
- (5) In its application to an unincorporated employers' association, section 81 shall have effect as if after subsection (1) there were inserted—
- “ (2) If an application in respect of the same matter has been made to the Certification Officer, the court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.”
- 21 In section 133 (provisions about amalgamations and similar matters to apply to unincorporated employers' associations) in subsection (2)(c) after “101(3)” there shall be inserted “, 103(2A) and (6) to (9)”.

Procedure before Certification Officer

- 22 In section 256 (procedure before Certification Officer) for subsection (2) (provision for restricting disclosure of individual's identity) there shall be substituted—
- “ (2) 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.
- (2A) Provision under subsection (2) 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.”
- 23 After section 256 there shall be inserted—

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“256A Vexatious litigants

- (1) The Certification Officer may refuse to entertain any application or complaint made to him under a provision of Chapters III to VIIA of Part I by a vexatious litigant.
- (2) The Certification Officer must give reasons for such a refusal.
- (3) Subsection (1) does not apply to a complaint under section 37E(1)(b) or to an application under section 41.
- (4) For the purposes of subsection (1) a vexatious litigant is a person who is the subject of—
 - (a) an order which is made under section 33(1) of the Employment Tribunals Act 1996 and which remains in force,
 - (b) 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,
 - (c) an order which is made under section 1 of the Vexatious Actions (Scotland) Act 1898, or
 - (d) an order which is made under section 32 of the Judicature (Northern Ireland) Act 1978.

256B Vexatious litigants: applications disregarded

- (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 section 256A(1).
- (2) The relevant enactments are sections 26(8), 31(7), 45C(5B), 56(8), 72A(10), 81(8) and 108A(13).”

9 Annual report by Certification Officer”

In section 258(1) (Certification Officer: annual report) for “calendar year” there shall be substituted “financial year”.