SCHEDULES

SCHEDULE 6

THE CERTIFICATION OFFICER

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

(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.

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)”.