
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 377

PENSIONS

**The Occupational Pension Schemes (Equal Treatment)
(Amendment) Regulations (Northern Ireland) 2005**

Made - - - - 8th August 2005

Coming into operation 30th August 2005

The Department for Social Development, being a Department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to measures relating to discrimination, in exercise of the powers conferred by that section and by Articles 63(5), 66(4), and 166(1) and (3) of the Pensions (Northern Ireland) Order 1995(3) and now vested in it(4) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 30th August 2005.

(2) In these Regulations—

“the Equal Pay Act” means the Equal Pay Act (Northern Ireland) 1970(5);

“armed forces” means the naval, military or air forces of the Crown;

“armed forces scheme” means any occupational pension scheme—

(a) made under section 3 of the Naval and Marine Pay and Pensions Act 1865(6) (payment of naval and marine pay and pensions according to Order in Council),

(1) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)

(2) 1972 c. 68

(3) S.I. 1995/3213 (N.I. 22)

(4) See Article 8(b) of S.R. 1999 No. 481

(5) 1970 c. 32 (N.I.)

(6) 1865 c. 73.; section 3 was amended by section 4 of the Armed Forces (Pensions and Compensation) Act 2004 (c. 32)

- (b) set out in the Army Pensions Warrant 1977(7),
- (c) made under section 2 of the Air Force (Constitution) Act 1917(8) (government, discipline and pay of Air Force),
- (d) made under sections 4 and 8 of the Reserve Forces Act 1996(9) (orders and regulations concerning the reserve forces), or
- (e) made under section 1 of the Armed Forces (Pensions and Compensation) Act 2004(10) (pension and compensation schemes: armed and reserved forces);

“commencement date” means the date specified in paragraph (1);

“equality clause” shall be construed in accordance with section 1(2) of the Equal Pay Act(11);

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993(12) (categories of pension scheme);

“pension-related term of service” has the meaning given by regulation 12(2); and

“pensioner member” includes a person who is entitled to the present payment of pension or other benefits derived through a member.

(3) The Interpretation Act (Northern Ireland) 1954(13) shall apply to these Regulations as it applies to an Act of the Assembly.

PART 2

EQUAL TREATMENT: AMENDMENTS

Application of Part 2

2.—(1) The modifications contained in amendments made by this Part apply to proceedings in respect of the terms of an occupational pension scheme if the proceedings are instituted on or after the commencement date (subject to paragraph (2)).

(2) Those modifications do not so apply if the last day on which the woman was employed in the employment to which the scheme relates falls more than six months before the commencement date.

The Pensions (Northern Ireland) Order

Modification of Equal Pay provisions applied to an equal treatment rule

3. Article 63(4)(c) of the Pensions (Northern Ireland) Order 1995 (equal treatment rule: supplementary) is hereby repealed.

(7) Available from the Office of Public Sector Information (formerly known as Her Majesty’s Stationery Office)

(8) 1917 c. 51

(9) 1996 c. 14

(10) 2004 c. 32

(11) Section 1(2) was substituted by Article 11 of the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) and subsection (2)(c) was inserted by S.R. 1984 No. 16

(12) 1993 c. 49

(13) 1954 c. 33 (N.I.)

The Occupational Pension Schemes (Equal Treatment) Regulations

Equal Pay Act provisions applying to equal treatment rule and equality clause

4. The Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995⁽¹⁴⁾ shall be amended in accordance with regulations 5 and 6.

Modifications: operation of equal treatment rule

5.—(1) In regulation 2 (application of Equal Pay Act to equal treatment rule)—

- (a) the existing provision shall be numbered as paragraph (1) of that regulation;
- (b) in paragraph (1) as so renumbered, for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) subject to the further modifications made in paragraph (2) and in regulations 3 to 7;”;

- (c) after that paragraph there shall be added the following paragraph—

“(2) Section 2ZA of the Equal Pay Act⁽¹⁵⁾ shall have effect in relation to an equal treatment rule as if—

- (a) for subsection (1) there were substituted the following subsections—

“(1) This section applies for the purpose of determining the qualifying date, in relation to relevant proceedings in respect of a woman, for the purposes of section 2(4)⁽¹⁶⁾.

(1A) In subsection (1) “relevant proceedings” means proceedings in respect of the terms on which—

- (a) persons become members of an occupational pension scheme, or
- (b) members of an occupational pension scheme are treated.”; and

- (b) in subsection (2)—

(i) in paragraph (a) of the definition of “concealment case”, the reference to the employer were a reference to the employer or the trustees or managers of the scheme, and

(ii) in paragraph (c) of the definition of “disability case”, the reference to the employer were a reference to the employer or the trustees or managers of the scheme.”.

(2) For regulation 5 (power to declare right to admission to scheme and employer’s duty to provide additional resources), there shall be substituted the following regulation—

“Power for a court or industrial tribunal to declare the right to admission to scheme

5. Where a claim to which regulation 3 applies, relates to the terms on which persons become members of the scheme, section 2 of the Equal Pay Act⁽¹⁷⁾ shall have effect as if, after subsection (5A) (as inserted by regulation 4), there were added the following subsection—

“(6A) Where a court or industrial tribunal finds that there has been a breach of an equal treatment rule which relates to the terms on which persons become members of the scheme

⁽¹⁴⁾ S.R. 1995 No. 482

⁽¹⁵⁾ Section 2ZA was inserted by regulation 4 of S.R. 2004 No. 171

⁽¹⁶⁾ Section 2(4) was substituted by regulation 3 of S.R. 2004 No. 171

⁽¹⁷⁾ Section 2 was amended by paragraphs 2 and 6 of Schedule 1 to the Sex Discrimination (Northern Ireland) Order 1976 and regulation 3 of S.R. 2004 No. 171

(including any terms concerning the age or length of service needed for becoming a member of the scheme), the court or tribunal may declare that a woman has the right to be admitted to the scheme with effect from such date as it may specify provided that, in any case, that date is not earlier than 8th April 1976.””.

(3) For regulation 7 (power to make financial award for equal treatment claims by pensioner members and employer’s duty to provide additional resources) there shall be substituted the following regulation—

“Power for a court or industrial tribunal to make a financial award for equal treatment claims by pensioner members and employer’s duty to provide additional resources

7.—(1) This regulation applies in the case of a claim by a pensioner member in respect of a failure to comply with an equal treatment rule which relates to the terms on which the member is treated.

(2) Section 2 of the Equal Pay Act shall have effect as if—

(a) for subsection (5) there were substituted the following subsection—

“(5) A woman who is a pensioner member shall not be entitled, in proceedings brought in respect of a failure to comply with an equal treatment rule (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits or damages or any other financial award in respect of a time earlier than the arrears date (determined in accordance with section 2ZB(18)).”;

(b) the following subsections were added after subsection (5A) (as inserted by regulation 4)—

“(6C) Where a court or industrial tribunal awards a payment by way of arrears of benefits or damages, or makes any other financial award, the employer shall provide any such resources to the scheme as are specified in subsection (7C).

(7C) The resources referred to in subsection (6C) are such additional resources, if any, as may be necessary for the scheme to secure to the pensioner member the payment of the amount awarded or other financial award made, without contribution or further contribution by the pensioner member or by other members of the scheme.”.

(3) Section 2ZB of the Equal Pay Act shall have effect as if—

(a) for subsection (1) there were substituted the following subsections—

“(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of benefits or damages or any other financial award in relevant proceedings in respect of a woman, for the purposes of section 2(5).

(1A) In subsection (1), “relevant proceedings” means proceedings in respect of the terms on which members of an occupational pension scheme are treated.”; and

(b) in subsection (2), the reference in the definition of “concealment case” to the employer were a reference to the employer or the trustees or managers of the scheme.”.

Modifications: operation of equality clause on pension-related terms of employment

6. For regulation 10 (power to declare right to admission to scheme for breach of term in contract of employment and employer's duty to provide additional resources) there shall be substituted the following regulation—

“Power for a court or industrial tribunal to declare right to admission to scheme for breach of term in contract of employment in relation to access claims

10. Where a claim to which regulation 9 applies, relates to the terms on which persons become members of the scheme, section 2 of the Equal Pay Act shall have effect as if, after subsection (5) (as modified by regulation 9), there were added the following subsection—

“(6D) Where a court or industrial tribunal finds that there has been a breach of an equality clause which relates to the terms on which persons become members of the scheme (including any terms concerning the age or length of service needed for becoming a member of the scheme), the court or tribunal may declare that a woman has a right to be admitted to the scheme with effect from such date as it may specify provided that, in any case, that date is not earlier than 8th April 1976.””.

PART 3

EQUAL TREATMENT RULE: ARMED FORCES SCHEMES

Application of Part 3

7.—(1) This Part —

- (a) applies (with modifications) certain provisions of the Equal Pay Act in relation to the operation of an equal treatment rule in respect of the terms of an occupational pension scheme, but
- (b) applies only to schemes which are an armed forces scheme.

(2) The modifications of the Equal Pay Act made by this Part apply to proceedings in respect of the terms of an armed forces scheme if the proceedings are instituted on or after the commencement date (subject to paragraph (3)).

(3) Those modifications do not so apply if the last day of the woman's period of service (to which the scheme relates) in the armed forces falls more than nine months before the commencement date.

Operation of the equal treatment rule on armed forces schemes

8. Section 6A of the Equal Pay Act(19) (service pay and conditions) shall have effect, in relation to the operation of an equal treatment rule in respect of an armed forces scheme, (see also regulations 10 and 11 which make further modifications to deal with different cases) as if—

- (a) subsections (1) and (2) were omitted;
- (b) for subsections (3) and (4) there were substituted the following subsections—

“(3) Any claim in respect of the contravention, in respect of a woman, of a term of an armed forces scheme which—

- (a) relates to the terms on which—
 - (i) persons become members of the scheme, or

(19) Section 6A was inserted by section 25(2) of the Armed Forces Act 1996 (c. 46) and amended by regulation 6 of S.R. 2004 No. 171

- (ii) members of the scheme are treated, and
- (b) is modified or included by an equal treatment rule, may be presented by way of a complaint to an industrial tribunal under this section (and may not be presented by way of a complaint to an industrial tribunal under section 2).
- (4) Subsections (5) to (10) apply in relation to any claim by a woman (“the claimant”) arising from a contravention of a term of a scheme referred to in subsection (3).”;
- (c) for subsection (10) there were substituted the following subsection—
 - “(10) Section 2A shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an industrial tribunal under section 2(1), but with the substitution for any reference to section 1(2)(c) of a reference to Article 62(3)(c) of the Pensions (Northern Ireland) Order 1995 (the equal treatment rule).”;
- (d) in subsection (12), after the definition of “armed forces”, there were inserted the following definition—
 - ““armed forces scheme” has the same meaning as in the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations (Northern Ireland) 2005;”, and
- (e) after subsection (13) there were added the following subsection—
 - “(14) In the application of this section and sections 6AA and 6AB(20) to any claim in respect of the contravention of a term of an armed forces scheme, expressions used in any of those sections and in the Pensions (Northern Ireland) Order 1995 have the same meaning as in that Order.”.

Definition of “qualifying date”: proceedings relating to armed forces schemes

9. Section 6AA of the Equal Pay Act (meaning of “qualifying date” under section 6A(8)) shall have effect, in relation to the operation of an equal treatment rule in respect of an armed forces scheme as if—

- (a) for subsection (1) there were substituted the following subsections—
 - “(1) This section applies for the purpose of determining the qualifying date, in relation to relevant proceedings on a complaint in respect of a woman, for the purposes of section 6A(8).
 - (1A) In subsection 1 “relevant proceedings” means proceedings in respect of the terms on which—
 - (a) persons become members of an armed forces scheme, or
 - (b) members of an armed forces scheme are treated.”, and
- (b) in subsection (2), in the definitions of “concealment case” and “disability case”, for “the employer” there were substituted “the employer or the managers of the armed forces scheme”.

Claims relating to contraventions of terms as to admission or treatment

10. In the case of a claim that—

- (a) is made in respect of a contravention of a term of an armed forces scheme that relates to the terms on which—

- (i) persons become members of the scheme, or
 - (ii) members of the scheme are treated, and
- (b) does not fall within regulation 11,

section 6A of the Equal Pay Act shall have effect as if it were further modified so that for subsection (9) there were substituted the following subsections—

“(9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of benefits or damages or any other financial award.

(9A) A court or industrial tribunal which finds that there has been a contravention of a term which is modified or included by an equal treatment rule may—

- (a) where the contravention relates to the terms on which persons become members of an armed forces scheme (including any terms concerning the age or length of service needed for becoming a member of the scheme), declare that a woman has the right to be admitted to the scheme with effect from such date as the court or industrial tribunal may specify provided that, in any case, that date is not earlier than 8th April 1976;
- (b) where the contravention relates to the terms on which members of an armed forces scheme are treated, declare that a woman who is a member has a right to equal treatment in respect of such a period as the court or industrial tribunal may specify provided that, in any case, that period does not begin before 17th May 1990.

(9B) Where a declaration under subsection (9A)(b) relates to any period falling before the date of the declaration, the employer shall provide to the armed forces scheme such additional resources (if any) as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of the declaration as if that member had been treated equally in respect of that period.”.

Claims by pensioner members relating to contraventions of terms as to treatment

11.—(1) In the case of a claim that—

- (a) is made in respect of a contravention of a term of an armed forces scheme that relates to the terms on which members of the scheme are treated, and
- (b) is made by a pensioner member,

the following provisions of the Equal Pay Act shall have effect as if they were modified (or in the case of section 6A further modified) as follows.

(2) Section 6A shall have effect as if for subsection (9) there were substituted the following subsections—

“(9) A woman who is a pensioner member shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of benefits or damages or any other financial award in respect of a time earlier than the arrears date (determined in accordance with section 6AB);

(9A) Where a court or industrial tribunal awards a payment by way of arrears of benefits or damages, or makes any other financial award, the employer shall provide any such resources to the armed forces scheme as are specified in subsection (9B).

(9B) The resources referred to in subsection (9A) are such additional resources, if any, as may be necessary for the scheme to secure to the pensioner member the payment of the

amount awarded or other financial award made, without contribution or further contribution by the pensioner member or by other members of the scheme.”.

- (3) Section 6AB (“arrears date” in proceedings under section 6A(9)) shall have effect as if —
- (a) for subsection (1) there were substituted the following subsection—
- “(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of benefits or damages or any other financial award in relevant proceedings in respect of a woman, for the purposes of section 6A(9).
- (1A) In subsection (1) “relevant proceedings” means proceedings on a complaint in respect of the terms on which members of an armed forces scheme are treated.”, and
- (b) in subsection (2), in paragraph (a) of the definition of “concealment case” for “the employer” there were substituted “the employer or the managers of the armed forces scheme”.

PART 4

EQUALITY CLAUSE: SERVICE IN ARMED FORCES

Application of Part 4

12.—(1) This Part modifies the Equal Pay Act in relation to the operation of an equality clause in respect of a pension-related term of service.

(2) “Pension-related term of service” means a term of service in any of the armed forces which relates to the terms on which—

- (a) persons become members of an armed forces scheme; or
- (b) members of such a scheme are treated.

(3) The modifications of the Equal Pay Act made by this Part apply to proceedings in respect of pension-related terms of service if the proceedings are instituted on or after the commencement date (subject to paragraph (4)).

(4) Those modifications do not so apply if the last day of the woman’s period of service in the armed forces falls more than nine months before the commencement date.

Operation of equality clause on pension-related terms of service

13. Section 6A of the Equal Pay Act (service pay and conditions) shall have effect, in relation to the operation of an equality clause in respect of a pension-related term of service, (see also regulations 14 and 15 which make further modifications to deal with different cases) as if—

- (a) in subsection (12) after the definition of “armed forces” there were inserted the following definitions—

““armed forces scheme” and “pension-related term of service” have the same meaning as in the Occupational Pension Scheme (Equal Treatment) (Amendment) Regulations (Northern Ireland) 2005;”.

- (b) after subsection (13) there were added the following subsection—

“(14) In the application of this section and sections 6AA and 6AB to any claim in respect of a contravention of a pension-related term of service—

- (a) references to pay shall be regarded as references to benefits; and
- (b) expressions used in any of those sections and in the Pensions (Northern Ireland) Order 1995 have the same meaning as in that Order.”.

Claims relating to contraventions of terms as to admission or treatment

14. In the case of a claim that—

- (a) is made in respect of a contravention of a pension-related term of service, and
- (b) does not fall within regulation 15,

section 6A of the Equal Pay Act shall have effect as if it were further modified so that for subsection (9) there were substituted the following subsections—

“(9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of benefits or damages.

(9A) A court or industrial tribunal which finds that there has been a contravention of a pension-related term of service which is modified or included by a term corresponding to an equality clause in a contract of employment may—

- (a) where the contravention relates to the terms on which persons become members of an armed forces scheme (including any term concerning the age or length of service needed for becoming a member of the scheme), declare that a woman has the right to be admitted to the scheme with effect from such date as the court or industrial tribunal may specify provided that, in any case, that date is not earlier than 8th April 1976;
- (b) where the contravention relates to the terms on which members of an armed forces scheme are treated, declare that a woman who is a member has a right to equal treatment in respect of such a period as the court or industrial tribunal may specify provided that, in any case, that period does not begin before 17th May 1990.

(9B) Where a declaration under subsection (9A)(b) relates to any period falling before the date of the declaration, the employer shall provide to the armed forces scheme such additional resources (if any) as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of the declaration as if that member had been treated equally in respect of that period.”.

Claims by pensioner members relating to contraventions of terms as to treatment

15.—(1) In the case of a claim that—

- (a) is in respect of a contravention of a pension-related term of service that relates to the terms on which members of the scheme are treated, and
- (b) is made by a pensioner member,

section 6A of the Equal Pay Act shall have effect as if it were further modified so that in subsection (9), after “A woman” there were inserted “who is a pensioner member”, and after subsection (9) there were inserted the following subsections—

“(9A) Where a court or industrial tribunal awards a payment by way of arrears of benefits or damages, the employer shall provide any such resources to the armed forces scheme as are specified in subsection (9B).

(9B) The resources referred to in subsection (9A) are such additional resources, if any, as may be necessary for the scheme to secure to the pensioner member the payment of the amount awarded, without contribution or further contribution by the pensioner member or by other members of the scheme.”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Sealed with the Official Seal of the Department for Social Development on 8th August 2005.

John O'Neill
A senior officer of the
Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the statutory provisions that require equal treatment of men and women in respect of occupational pension schemes. The amendments made by the Regulations reflect requirements of European Community law (specifically Article 141 of the Treaty of Rome on equal pay), as applied in a number of cases before the European Court of Justice and the domestic courts⁽²¹⁾. Part 2 applies to occupational pension schemes generally. Parts 3 and 4 of the Regulations introduce new provisions applying only to armed forces occupational pension schemes.

Under Article 62 of the Pensions (Northern Ireland) Order 1995 (“the Pensions Order”), occupational pension schemes that do not already contain provision for equal treatment are to be treated as if they contained an equal treatment rule. This enables a woman who receives less favourable treatment than a man in the same employment to complain to an industrial tribunal. Men treated less favourably than women may also present complaints. Article 63 of the Pensions Order applies to an equal treatment rule certain time limits and other provisions that are imposed by section 2 of the Equal Pay Act (Northern Ireland) 1970 (“the Equal Pay Act”) in relation to an equality clause in employment contracts. These time limits are modified, in their application to an equal treatment rule, by Article 63(4) of the Pensions Order and by the Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995 (“the 1995 Regulations”).

Regulation 3 repeals one of the modifications made by Article 63 of the Pensions Order. The effect of the repeal is that the period within which a person can institute proceedings before an industrial tribunal is the same for both an equal treatment rule and an equality clause.

Regulation 5 modifies the time limits that apply to proceedings about failure to comply with the equal treatment rule. Regulation 5(2) extends the time limits on the backdating of a declaration of a person’s right to be admitted to a pension scheme. Regulation 5(2) also removes the obligation on the employer to contribute funds where rights to be admitted to the scheme are backdated. Regulation 5(1) and (3) makes changes consequential on amendments to certain provisions of the Equal Pay Act which were made by the Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2004.

An equality clause applies to terms of an employment contract, including terms which relate to a person’s membership of, or treatment under, an occupational pension scheme. The operation of an equality clause in relation to such a scheme is subject to any modifications made by the Department under Article 66(4) of the Pensions Order. Regulation 6 makes changes relating to the operation of the equality clause in relation to a court or tribunal’s power to backdate a declaration of a person’s right to be admitted to a pension scheme. The effect is equivalent to the amendment made by regulation 5(2).

Parts 3 and 4 modify provisions of the Equal Pay Act 1970 that relate to armed forces. Part 3 modifies such provisions in relation to the operation of an equal treatment rule in respect of an armed forces occupational pension scheme. Part 4 modifies such provisions as they affect the operation of an equality clause on terms of service in the armed forces which relate to the way in which persons become members of such a scheme, or members of such a scheme are treated. These Parts make provision equivalent to that made by the 1995 Regulations as amended by Part 2 of these Regulations.

(21) See the European Court of Justice’s decisions in *Levez v T.H. Jennings (Harlow Pools) Ltd* (Case C-326/96, judgment of 1st December 1998) and *Preston and others v Wolverhampton Healthcare NHS Trust Ltd and others* (Case C-78/98, judgment of 16th May 2000); the decision of the Employment Appeal Tribunal in *Levez v T.H. Jennings (Harlow Pools) Ltd* (decision of 1st October 1999) and the ruling of the House of Lords in *Preston and others v Wolverhampton Healthcare NHS Trust Ltd and others* (ruling of 8th February 2001).

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The changes made by the Regulations reflect the requirements of Article 141 as applied in a number of cases before the European Court of Justice and the domestic courts and are detailed in a Note which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Note are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA.

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, copies of which have been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA.

As these Regulations, in so far as they are made under Part II of the Pensions Order, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation under Article 117(1) of the Pensions Order does not apply by virtue of paragraph (2)(e) of that Article.