

1975 No. 108

SOCIAL SECURITY

The Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975

Made 4th April 1975

Coming into operation 6th April 1975

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 17(1)(a), 20(3) and 124(1) of the Social Security (Northern Ireland) Act 1975(a), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975, and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security (Northern Ireland) Act 1975;

“British ship” means any ship or vessel whose port of registry is a port in Northern Ireland or in the case of a hovercraft which is registered in the United Kingdom;

“foreign-going voyage” means a voyage going outside the following limits, that is to say, the United Kingdom, the Republic of Ireland, the Channel Islands, the Isle of Man and the continent of Europe between the river Elbe and Brest inclusive;

“managing owner” means that owner of any ship or vessel who, where there is more than one such owner, is responsible for the control and management of that ship or vessel;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

(a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried thereby; and

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

but does not include a person in so far as his employment is as a serving member of the forces (as defined in regulation 1(2) of the Social Security (Contributions) Regulations 1975(b)), unless he is serving or undergoing training or instruction in any of the forces mentioned in Part I of Schedule 5 to those regulations (except the regular naval, military or air forces of the Crown) for a continuous period not exceeding 72 consecutive hours;

“owner”, in relation to any ship or vessel, means the person to whom the ship or vessel belongs and who, subject to the right of control of the captain or master of the ship or vessel, is entitled to control of that ship or vessel, and references to the owner of a ship or vessel shall, in relation to a ship or vessel which has been demised, be construed as referring to the person who for the time being is entitled as charterer to possession and, subject as aforesaid, control of the ship or vessel by virtue of the demise or any sub-demise;

“share fisherman” means any person who—

(a) is ordinarily employed in the fishing industry otherwise than under a contract of service, as master or a member of the crew of any British fishing boat within the meaning of section 373 of the Merchant Shipping Act 1894(c), being a fishing boat manned by more than one person, and remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of the fishing boat; or

(b) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Northern Ireland otherwise than under a contract of service making or mending any gear appurtenant to a British fishing boat or performing other services ancillary to or in connection with that boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in such employment;

“sea-going share fisherman” means a person falling within sub-paragraph (a) of the definition of “share fisherman” above;

“on-shore share fisherman” means a person falling within sub-paragraph (b) of the definition of “share fisherman” above;

and, subject as aforesaid, expressions to which meanings are assigned in the Merchant Shipping Acts 1894 to 1970 have the same meanings as in those Acts; and other expressions have the same meanings as in the Act.

(3) Regulations 1, 4, 6(1) and (2) and 9, in their application to mariners but not in their application to share fishermen, shall have effect as if any reference therein in whatever terms to ships or vessels or activities or places connected therewith included a reference to hovercraft or activities or places connected with hovercraft, subject to the modifications contained in the Schedule to these regulations.

(4) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(d) shall apply for the purposes of the interpretation of this statutory rule as they apply for the purposes of the interpretation of an Act of Parliament.

(c) 1894 c. 60

(d) 1889 c. 63

Days in periods of paid leave not to be treated as days of unemployment

2. Where a person, either being domiciled or having a place of residence in the United Kingdom—

- (a) is employed as a mariner on board any British ship, not being a ship used wholly or mainly for the disposal of sludge; or
 - (b) is employed as a mariner on board any ship or vessel, not being a British ship or a ship or vessel used wholly or mainly for the disposal of sludge, and—
 - (i) the contract in respect of the employment is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage; and
 - (ii) the owner (or managing owner, if there is more than one owner) has a place of business in Northern Ireland; and
 - (c) upon the termination of a voyage ending during the period of that employment, he is entitled to a day or days of leave on pay, and
 - (d) that employment is terminated before the end of the period of leave on pay,
- no day in the period of leave shall be treated as a day of unemployment.

Information to be furnished by mariners on claims for benefit

3. Upon making any claim for benefit, any mariner shall, if so required, furnish to the Department the number of his continuous discharge book and particulars of the ships and vessels on board which he was employed during any period material to the claim.

Removal of disqualification for receiving benefit by reason of absence from Northern Ireland

4. Any person, who is or has been employed as a mariner on board any ship or vessel or who is or has been under contract to travel at his employer's expense for the purpose of commencing such employment, shall not by reason of his being absent from Northern Ireland (but subject to the provisions of any regulations made under section 20(2)(a) (disqualification through misconduct) of the Act), be disqualified on any day for receiving—

- (a) sickness or invalidity benefit, if
 - (i) on account of any hurt or injury received, or any illness suffered, by him while so employed or under contract so to travel; or
 - (ii) in consequence of any action taken, while he is or was so employed or under contract so to travel, for the purpose of preventing infection;
 he has been left outside Northern Ireland or has been discharged or has not commenced such employment; or
- (b) unemployment, sickness or invalidity benefit, if, while so employed or under contract so to travel, he has been left outside Northern Ireland for any reasons other than those specified in sub-paragraphs (i) and (ii) of paragraph (a) of this regulation, and reports to the appropriate superintendent or consular officer or chief officer of customs not later than 14 days after being so left, or, if, at the time of being so left, he was placed in custody, immediately after his release from custody:

Provided that this regulation shall cease to have effect—

- (a) on that person's commencing or resuming employment outside Northern Ireland; or

- (b) in any case where that person is not returned without undue delay to the place to which regulation 7 of the Merchant Shipping (Repatriation) Regulations 1972(e) requires him to be returned, on the occurrence of the delay; or
- (c) in any other case, on his being returned to the place mentioned in sub-paragraph (b) of this proviso.

Evidence of unemployment or incapacity

5. For the purpose of any claim to unemployment, sickness or invalidity benefit by a mariner or share fisherman employed on board any ship or vessel, evidence may be taken—

- (a) in any part of the Commonwealth or the Republic of Ireland, before a judge or magistrate, or by a superintendent;
- (b) in a foreign country, by a British consular officer.

Special provisions relating to days of unemployment or incapacity for work in the case of mariners and share fishermen employed on board any ships or vessels

6.—(1) A mariner or share fisherman employed as such on board any ship or vessel shall, notwithstanding that he is absent from Northern Ireland, be deemed to be available to be employed in employed earner's employment on any day, if he would be so available, or in the case of a share fisherman would be available for employment as a share fisherman, were he, on that day, in Northern Ireland.

(2) Where by virtue of regulation 4(a) above a person is not disqualified on any day for receiving sickness or invalidity benefit, although absent from Northern Ireland, he shall be deemed to be incapable of work by reason of some specific disease or bodily or mental disablement on any such day.

(3) A mariner shall not be precluded from being treated as being unemployed on any day by reason only that in respect of that day he receives a payment of establishment benefit under the Merchant Navy Established Service Scheme or any amendment of that Scheme approved by the Department.

Modification of contribution conditions for receiving benefit in certain circumstances, in respect of mariners employed on board foreign-going ships

7. Where, on a claim for benefit, a contribution condition that the contributor concerned must in respect of the relevant past year have either paid or been credited with contributions of a relevant class and the earnings factor derived from those contributions must be not less than a specified multiple of that year's lower earnings limit cannot apart from this regulation be satisfied because the contributor concerned has been employed during the relevant past year in employment as a mariner on a foreign-going voyage in respect of which contributions were payable but have not yet been recorded, the contributor shall be deemed, until contributions have been recorded in respect of that voyage, to have paid contributions, in respect of earnings equal to the lower earnings limit, for each week in the period beginning on the Sunday of the week in which the voyage began and ending at the end of that year or (if earlier) when the voyage ended.

Special provisions relating to share fishermen

8.—(1) For the purposes of the contribution conditions for unemployment benefit contained in paragraph 1 of Schedule 3 to the Act, any Class 2 contribution paid by a share fisherman at the rate applicable to share fishermen in accordance with regulation 87(c) of the Social Security (Contributions) (Northern Ireland) Regulations 1974(f), as amended(g), shall be deemed to be a contribution of a relevant class, and so much of any earnings factor as is derived from such contributions shall be deemed to be derived from contributions of a relevant class.

(2) For the purposes of section 17(1)(a)(i) of the Act (determination of days for which unemployment benefit is payable), a share fisherman who is available for employment as a share fisherman shall be deemed to be available to be employed in employed earner's employment.

(3) For the purposes of sections 18(2) (requalification for unemployment benefit) and 19(1) and 20(1) (disqualification for unemployment benefit) of the Act, employment as a share fisherman shall be treated as employed earner's employment, and for the purposes of section 19(2)(b) of the Act (trade disputes), the owner (or managing owner if there is more than one owner) of a fishing boat shall be treated as the employer of any share fisherman (other than himself) ordinarily employed as master or a member of the crew of, or making or mending any gear appurtenant to or performing other services ancillary to or in connection with, that fishing boat, and any such share fisherman shall be treated as his employee.

(4) For the purposes of section 17(1)(b) of the Act (as substituted by section 17(3) of the Act) (determination of days for which benefit is payable) a share fisherman who on any day performs no work as a share fisherman shall, in respect of that day, be treated as an employed earner whose employment as such has not been terminated but has been suspended by the employer.

(5) It shall be an additional condition with respect to the receipt of unemployment benefit by a sea-going share fisherman in respect of any day, that it is a day on which he performs no work as a share fisherman and in respect of which he proves that he has not neglected to avail himself of a reasonable opportunity of employment as a fisherman.

(6) Where a sea-going share fisherman is master or a member of the crew of a fishing boat of which either the master or any member of the crew is the owner or part owner, he must, in addition to satisfying the additional condition contained in paragraph (5) above, also prove that there was no work on or in connection with that fishing boat available for him on that day for the reason—

- (a) that on account of the state of the weather the fishing boat could not reasonably have put to sea with a view to fishing; or
- (b) that the fishing boat was undergoing repairs or maintenance, not being repairs or maintenance to which paragraph (7) below relates; or
- (c) that there was an absence of fish from any waters in which the fishing boat could reasonably be expected to operate; or
- (d) that any other good cause necessitated abstention from fishing.

(f) S.R. 1974 No. 234

(g) The relevant amending regulation is S.R. 1975 No. 56

(7) The following provisions shall apply for the purposes of the application of paragraph (5) above:

- (a) Work as a share fisherman within the meaning of paragraph (5) shall include any of the work specified in sub-paragraph (b) below which at the time of its performance is necessary for the safety or reasonable efficiency of the fishing boat, or is likely to become so necessary in the near future, and which it is the duty of the share fisherman (whether by agreement, custom, practice or otherwise) to undertake without remuneration other than by way of a share in the profits or gross earnings of the fishing boat, but any other work done to the fishing boat or its nets or gear shall be disregarded; and
- (b) the work so included by sub-paragraph (a) above is any work done to the fishing boat or its nets or gear by way of repairs (including running repairs) or maintenance, or in connection with the laying up of the boat and its nets and gear at the end of a fishing season or their preparation for a season's fishing.

(8) It shall be an additional condition with respect to the receipt of unemployment benefit by an on-shore share fisherman in respect of any day, that it is a day in respect of which he proves that he has not neglected to avail himself of a reasonable opportunity of such employment as is mentioned in sub-paragraph (b) of the definition of the expression "share fisherman" in regulation 1(2) above.

(9) Where an on-shore share fisherman derives his remuneration wholly or partly from a fishing boat of which either he or the master or any member of the crew is the owner or part owner, he must, in addition to satisfying the additional condition contained in paragraph (8) above, also prove that that fishing boat did not put to sea on that day with a view to fishing for any of the reasons specified in sub-paragraphs (a) to (d) of paragraph (6) above.

(10) A day in respect of which unemployment benefit is not payable by reason of any failure to satisfy the conditions contained in this regulation shall not be treated as a day of unemployment, but nothing in this regulation shall enable any day to be treated as a day of unemployment which could not be so treated apart from this regulation.

Application of the Act and regulations

9. The provisions relating to benefit (other than industrial injuries benefit) of the Act and of the regulations made thereunder shall, so far as they are not inconsistent with the provisions of these regulations, apply to mariners and share fishermen with this modification, that where a mariner or share fisherman is, on account of his being at sea or outside the United Kingdom by reason of his employment as a mariner or a share fisherman, unable to perform an act required to be done either forthwith or on the happening of a certain event or within a specified time, he shall be deemed to have complied therewith if he performs the act as soon as is reasonably practicable, although after the happening of the event or the expiration of the specified time.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 4th April 1975.

(L.S.)

C. G. Oakes
Assistant Secretary

SCHEDULE

Regulation 1(3)

Modifications of these regulations in their application to hovercraft and activities and places connected with hovercraft

1. In regulation 1(2), the words "and, subject as aforesaid, expressions to which meanings are assigned in the Merchant Shipping Acts 1894 to 1970 have the same meanings as in those Acts" shall not apply.

2. In regulation 4, in paragraph (b) the words "superintendent or" shall be omitted; in sub-paragraph (b) of the proviso for the words "the place to which regulation 7 of the Merchant Shipping (Repatriation) Regulations 1972 requires him to be returned" there shall be substituted the words "Northern Ireland"; and in sub-paragraph (c) of the proviso for the words "the place mentioned in sub-paragraph (b) of this proviso" there shall be substituted the words "Northern Ireland".

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

These regulations modify and amplify the general provisions relating to benefit (other than industrial injuries benefit) of the Social Security (Northern Ireland) Act 1975 and the regulations made thereunder, in their application to persons who are or have been mariners or share fishermen. The principal modifications and amplifications are a provision that in certain cases days of leave on pay immediately after the end of a voyage are not to be treated as days of unemployment (regulation 2); the removal, in certain circumstances, of the statutory disqualification for the receipt of benefit for periods of absence from Northern Ireland (regulation 4); a provision for deeming a mariner or share fisherman to be available for employment or incapable of work by reason of disease or disablement in certain circumstances when he is absent from Northern Ireland (regulation 6); a provision for the modification, in certain circumstances, of the contribution conditions for receiving benefit in respect of mariners employed on foreign-going ships (regulation 7); special provisions relating to conditions for the receipt of unemployment benefit by share fishermen (regulation 8); and provision for the extension, in certain circumstances, in the case of a mariner or share fisherman employed as such outside the United Kingdom, of the time within which certain acts have to be performed for the purpose of the provisions relating to benefit (other than industrial injuries benefit) of the Act and of regulations made thereunder (regulation 9). The remaining provisions are of an incidental or consequential character.