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STATUTORY INSTRUMENTS

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**1996 No. 207**

**The Jobseeker's Allowance Regulations 1996**

**PART XII**

**SPECIAL CATEGORIES SHARE FISHERMEN, PERSONS  
OUTSIDE GREAT BRITAIN AND MEMBERS OF THE FORCES**

*Chapter I*

*Share Fishermen*

**Interpretation**

**156.** In this Chapter—

“fishing boat” means a fishing vessel as defined by section 313 of the Merchant Shipping Act 1995<sup>(1)</sup>;

“share fisherman” means any person who—

- (a) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of any fishing boat manned by more than one person, and is 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 Great Britain, otherwise than under a contract of service, making or mending any gear appurtenant to a 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;

and other expressions used in this Chapter, unless the context otherwise requires, have the same meanings as in the Social Security (Mariners' Benefits) Regulations 1975<sup>(2)</sup>.

**Special provisions in respect of share fishermen**

**157.** The Act and the foregoing provisions of these Regulations shall have effect in relation to share fishermen subject to the provisions of this Chapter.

**Modifications of section 2**

**158.—**(1) Section 2 (the contribution-based conditions) shall apply to share fishermen with the modifications set out in the following provisions of this regulation.

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(1) 1995 c. 21.

(2) S.I. 1975/529.

(2) After the words “Class 1 contributions” in each place where they appear there shall be inserted the words “or special Class 2 contributions”.

(3) In subsection (4) after the definition of “the relevant benefit year” there shall be inserted the following definition—

““special Class 2 contributions” means any Class 2 contributions paid by a share fisherman at the rate applicable to share fishermen in accordance with regulation 98(c) of the Social Security (Contributions) Regulations 1979(3).”.

### **Modifications of sections 19 and 20**

**159.** For the purposes of sections 19 and 20 (circumstances in which a jobseeker’s allowance is not payable) employment as a share fisherman shall be treated as employment as an employed earner.

### **Modification of section 35**

**160.** The definition of “trade dispute” in section 35(1) (interpretation) shall apply to share fishermen with the effect that 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 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.

### **Additional conditions for payment of a jobseeker’s allowance**

**161.—**(1) It shall be an additional condition with respect to the payment of a jobseeker’s allowance to a share fisherman in respect of any week, that in respect of any period in that week when he has not worked as a share fisherman, he proves that he has not neglected to avail himself of a reasonable opportunity of employment as a share fisherman.

(2) The following provisions shall apply for the purposes of the application of paragraph (1)—

- (a) work as a share fisherman within the meaning of paragraph (1) shall include any of the work specified in sub-paragraph (b) 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) 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.

(3) It shall be a further additional condition with respect to the payment of a contribution-based jobseeker’s allowance to a share fisherman in respect of any week that, where he 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 also prove that in respect of any period in that week when he was not working as a share fisherman, the fishing boat did not put to sea with a view to fishing 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 (2) 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.

### **Remunerative work**

**162.** In determining the number of hours in which a person is engaged in remunerative work for the purposes of establishing entitlement to a contribution-based jobseeker's allowance, no account shall be taken of any hours in which a person is engaged in work as a share fisherman.

### **Calculation of earnings**

**163.**—(1) In the calculation of earnings derived from work as a share fisherman for the purposes of establishing entitlement to a contribution-based jobseeker's allowance, the provisions of Part VIII (income and capital) shall apply subject to the following provisions of this regulation.

(2) Regulation 95 (calculation of earnings of self-employed earners) shall be omitted.

(3) For regulation 101 (calculation of net profit of self-employed earners) there shall be substituted the following regulation—

#### **“Calculation of earnings derived from work as a share fisherman**

**101.**—(1) Earnings derived from employment as a share fisherman within the meaning of regulation 156 (interpretation) shall be calculated in accordance with the following provisions of this regulation.

(2) Any such earnings shall be treated as paid in the benefit week in respect of which they are earned.

(3) The amount of earnings to be taken into account in respect of any benefit week shall be the claimant's share of the net profit derived from that work less—

- (a) an amount in respect of income tax and national insurance contributions under the Benefits Act calculated in accordance with regulation 102 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of any premium paid in respect of a personal pension scheme.

(4) Subject to paragraph (5), there shall be disregarded from a claimant's weekly net profit—

- (a) £15; and
- (b) the amount of any earnings specified in paragraphs 4 and 15 of Schedule 6, if applicable.

(5) Where a share fisherman has earnings from work other than work as a share fisherman, and an amount is disregarded from those earnings in accordance with paragraphs 9, 10, or 12 of Schedule 6—

- (a) if the amount so disregarded is £15, paragraph (4)(a) shall not apply;
- (b) if the amount so disregarded is less than £15, the amount disregarded under paragraph (4)(a) shall not exceed the difference between the amount disregarded from those other earnings and £15.

(6) For the purposes of paragraph (3), the net profit shall be calculated by taking into account the earnings less, subject to paragraphs (7) to (9), any expenses relevant to that benefit week which were wholly, exclusively and necessarily incurred for the purposes of that employment.

(7) Subject to paragraph (8), no deduction shall be made under paragraph (6) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) the repayment of capital on any loan taken out for the purposes of the employment;
- (e) any expenses incurred in providing business entertainment.

(8) A deduction shall be made under paragraph (6) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(9) An adjudication officer shall refuse to make a deduction under paragraph (6) in respect of any expenses where he is not satisfied that the expense has been incurred or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(10) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (6) in respect of any sum unless it has been incurred for the purposes of the business;
- (b) a deduction shall be made in respect of—
  - (i) the excess of any VAT paid over VAT received in the benefit week;
  - (ii) any expense incurred in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(11) Notwithstanding the foregoing paragraphs, and adjudication officer may calculate earnings or expenditure over a period other than the benefit week if he considers it is reasonable to do so having regard to all the facts of the case and in particular whether the earnings earned or expenditure incurred in respect of a benefit week are usually high or low.

(12) In this regulation “benefit week” has the same meaning as in regulation 164 (share fishermen: amount payable).” (4) In regulation 102 (deduction of tax and contributions for self-employed earners)—

- (a) in paragraphs (1) and (2) — for the words “regulation 101(1)(b)(i)” there shall be substituted the words “regulation 101(3)(a)”;
- (b) in paragraph (3)(a) for the words “under paragraph (4)(a) or, as the case may be, (5)” there shall be substituted the words “under paragraph (6)”;
- (c) at the end of the regulation there shall be added the following paragraph—

“(4) For the purposes of paragraphs (1) and (2) the earnings to which the lower rate of tax is to be applied and the amount of personal relief deductible, the amount specified in section 11(4) of the Benefits Act, and the upper limit of profits and gains referred to in paragraph (2)(b), shall be apportioned pro rata according to the period over which the earnings are assessed in accordance with regulation 101.”.

### **Amount payable**

**164.**—(1) The amount payable to a share fisherman by way of a contribution-based jobseeker's allowance shall be calculated in accordance with regulations 79 to 81 (weekly amounts of contribution-based jobseekers allowance, deductions in respect of earnings and payments by way of pensions) and this regulation, and Part XI (part-weeks) shall not apply.

(2) Regulations 79 to 81 shall apply in respect of share fishermen so that the amount payable is calculated by reference to earnings earned and pension payments received in the benefit week.

(3) In this regulation "benefit week" means—

- (a) in respect of the week in which the claim is made, the period of 7 days beginning with the date of claim; and
- (b) in respect of any subsequent week, the period of 7 days beginning with the day after the last day of the previous benefit week.