7. MARINERS

The National Insurance (Mariners) Amendment Regulations, 1949

1949 No. 301

Made - - - -	*25th February*, 1949
*Laid before Parliament**	*25th February*, 1949
Coming into Operation	*3rd March*, 1949

M.N.I. 147.

The Minister of National Insurance, in conjunction with the Treasury so far as relates to matters with regard to which the Treasury have so directed, in exercise of powers conferred by sections 8 (1) (*a*), 9 (1), 13 (4) and 58 of the National Insurance Act, 1946, and the National Insurance Joint Authority, in exercise of powers conferred by section 11 (3) of that Act, and of all other powers enabling them in that behalf, hereby make the following regulations* :—

9 & 10 Geo. 6. c. 67.

Citation and commencement.

1. These regulations, which may be cited as the National Insurance (Mariners) Amendment Regulations, 1949, shall be read as one with the National Insurance (Mariners) Regulations, 1948(a) (hereinafter referred to as " the principal regulations ") and shall come into operation on the 3rd March, 1949.

Amendment of regulation 1 of principal regulations.

2. In paragraph (2) of regulation 1 of the principal regulations, the words " and includes a share fisherman " shall be inserted in the definition of " mariner " immediately after sub-paragraph (*b*); and the following definition shall be added immediately after the said definition of " mariner " :—

" ' share fisherman ' means any person who is or has been employed in the fishing industry, whether or not under a contract of service, as master or a member of the crew of any ship or vessel, being a fishing vessel manned by more than one person and remunerated in respect of that employment in whole or in part by a share in the profits or gross earnings of the fishing vessel; and the expression ' the fishing vessel ' means that fishing vessel of which the person is master or a member of the crew; "

Amendment of regulation 2 of principal regulations.

3. In paragraph (1) of regulation 2 of the principal regulations, there shall be added at the end of that paragraph the following proviso :—

" Provided that this paragraph, in so far as it treats employment as being an employed contributor's employment, shall not apply in respect of the employment of a person as a share fisherman not under contract of service unless that person either—

(*a*) during the twelve months immediately preceding the commencement of that employment has, or would but for his being unemployed or incapable of work have, been wholly or mainly

(a) S.I. 1948 (No. 1467) I, p. 2785.

* In accordance with section 76 (1) of the National Insurance Act, 1946, a draft of regulations 1, 2 and 3, and that part of regulation 4 which comprises paragraph (2) of the added regulation 14A and paragraphs (1) to (4) of the added regulation 14B, has been approved by each House of Parliament. The necessary Resolutions were passed by the House of Lords on the 22nd February, 1949, and by the House of Commons on the 1st February, 1949.

engaged in, and derived his livelihood wholly or mainly from, employment as a share fisherman or such employment and any other employment as an employed person; or

(*b*) if unable to satisfy the foregoing condition, may reasonably be expected so to be engaged and to derive his livelihood during the twelve months following the commencement of that employment;

and in determining under this proviso the commencement of such employment, but for that purpose only, any such employment occurring before the appointed day(a) shall be disregarded."

Provisions added to principal regulations.

4. The following provisions shall be added after regulation 14 of the principal regulations :—

Special provisions relating to share fishermen.

"**14A.**—(1) In the case of a share fisherman not employed under a contract of service to whom paragraph (1) of regulation 2 applies, the owner (or the managing owner or manager if there is more than one owner) of the fishing vessel shall for the purposes of the Act be treated as his employer.

(2) Notwithstanding the provisions of section 6 of the Act (which section relates to contributions of employed persons and employers) and any regulations made thereunder(b), contributions paid by an employer in respect or on behalf of a share fisherman to whom the preceding paragraph of this regulation applies may be deducted from the gross earnings of the fishing vessel before the share of the person so employed is ascertained.

(3) The provisions of paragraph (3) of regulation 4 shall not apply in the case of a fishing vessel (being a home trade ship) of which the master and every member of the crew are share fishermen to whom paragraph (1) of this regulation applies.

14B.—(1) Subject to the provisions of paragraph (4) of this regulation, it shall be an additional condition with respect to the receipt of unemployment benefit by a share fisherman (whether or not employed under a contract of service) 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.

(2) Where such a share fisherman is a master or member of the crew of a fishing vessel 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 the preceding paragraph, also prove that there was no work on or in connection with the fishing vessel available for him on that day for the reason—

(*a*) that on account of the state of the weather the fishing vessel could not reasonably have put to sea with a view to fishing; or

(*b*) that the fishing vessel was undergoing repairs or maintenance, not being repairs or maintenance to which paragraph (3) of this regulation relates; or

(a) 5th July, 1948. *See* S.I. 1948 (No. 54) I, p. 2615.

(b) *See* reg. 7, National Insurance and Industrial Injuries (Collection of Contributions) Regulations, 1948 (S.I. 1948 (No. 1274) I, p. 3037.)

(*c*) that there was an absence of fish from any waters in which the fishing vessel could reasonably be expected to operate ; or

(*d*) that any other good cause necessitated abstention from fishing.

(3) The following provisions shall apply for the purposes of the application of paragraph (1) of this regulation :—

(*a*) Work as a share fisherman within the meaning of the said paragraph (1) shall include any of the work specified in sub-paragraph (*b*) of this paragraph which at the time of its performance is necessary for the safety or reasonable efficiency of the fishing vessel, 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 vessel, but any other work done to the fishing vessel or its nets or gear shall be disregarded.

(*b*) The work so included by the foregoing sub-paragraph is any work done to the fishing vessel or its nets or gear by way of repairs (including running repairs) or maintenance, or in connection with the laying up of the vessel and its nets and gear at the end of a fishing season or their preparation for a season's fishing.

(4) Notwithstanding anything contained in this regulation, where a share fisherman proves in respect of any day—

(*a*) that the date of his entry into the fishing industry was at least twelve months before that day and he is not a person who during the twelve months immediately preceding that day has, or would but for his being unemployed or incapable of work have, been wholly or mainly engaged in, and derived his livelihood wholly or mainly from, employment as a share fisherman, or such employment and any other employment as an employed person ; or if the date of his entry into the fishing industry was less than twelve months before that day, that he is not a person who may reasonably be expected so to be engaged and to derive his livelihood during the twelve months following the date of such entry, and for this purpose entry means last entry ; or

(*b*) that before that day and since he was last employed as a share fisherman he has become regularly engaged in some other occupation ;

he shall not be subject to the provisions of paragraph (1) or (2) of this regulation in respect of that day.

(5) 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."

Revocation of existing regulations.

5. The National Insurance (Share Fishermen) Provisional Regulations, 1948(a), are hereby revoked but without prejudice to anything duly done or suffered, or to any right, privilege, obligation or liability acquired, accrued, or incurred, thereunder.

Given under the official seal of the Minister of National Insurance this 25th day of February, nineteen hundred and forty-nine.

(L.S.)

James Griffiths,
Minister of National Insurance.

Given under the official seal of the National Insurance Joint Authority this 25th day of February, nineteen hundred and forty-nine.

(L.S.)

S. S. Menneer,
Secretary,
National Insurance Joint Authority.

R. J. Taylor,
Wm. Hannan,
Two of the Lords Commissioners of His Majesty's Treasury.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations amend the National Insurance (Mariners) Regulations, 1948, so as to bring share fishermen not employed under a contract of service within the scope of those Regulations. Such share fishermen are in general treated as being employed by the owner of their fishing vessel, and provision is made for the deduction of contributions paid in respect or on behalf of them from the gross earnings of the vessel.

The Regulations also contain additional conditions for the receipt of unemployment benefit by share fishermen.

The Regulations revoke the National Insurance (Share Fishermen) Provisional Regulations, 1948, which made special provision in the case of share fishermen not under contract of service, but the provisions of those Regulations are substantially incorporated in the National Insurance (Mariners) Regulations, 1948, by these Regulations.

The preliminary draft of these Regulations was submitted to the National Insurance Advisory Committee in accordance with section 77 of the National Insurance Act, 1946, and their report thereon, dated the 28th November, 1948, is contained in the House of Commons Paper No. 37 published by His Majesty's Stationery Office.

(a) S.I. 1948 (No. 1395) I, p. 2872.