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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Jobseeker's Allowance Regulations 2013**

**PART 9**

**Share fishermen**

**Interpretation**

**67.** In this Part—

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

“owner” has the same meaning as in the Social Security (Mariners' Benefits) Regulations 1975(2);

“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 relevant 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.

**Special provisions in respect of share fishermen**

**68.** The Act and above provisions of these Regulations have effect in relation to share fishermen subject to the provisions of this Part.

**Modifications of section 2**

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

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

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

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(1) 1995 c.21.  
(2) S.I. 1975/529.

““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 125(c) of the Social Security (Contributions) Regulations 2001(3).”.

### **Modification of section 35**

**70.**—(1) The definition of “trade dispute” in section 35(1) of the Act (interpretation) applies to share fishermen with the effect that the owner (or managing owner if there is more than one owner) of a fishing boat is to be treated as the employer of any share fisherman (other than themselves) ordinarily employed as master or member of the crew of, or making or mending any gear relevant to, or performing other services ancillary to or in connection with, that fishing boat, and any such share fisherman is to be treated as their employee.

(2) In this regulation, “managing owner” means that the 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.

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

**71.**—(1) It is to be an additional condition with respect to the payment of a jobseeker’s allowance to a share fisherman in respect of any benefit week, that in respect of any period in that benefit week when they have not worked as a share fisherman, they prove that they have not neglected to avail themselves of a reasonable opportunity of employment as a share fisherman.

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

(a) work as a share fisherman within the meaning of paragraph (1) includes any of the work specified in sub-paragraph (b) which—

(i) 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

(ii) 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 is to 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 is to be a further additional condition with respect to the payment of a jobseeker’s allowance to a share fisherman in respect of any benefit week that, where they are 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, they must also prove that in respect of any period in that benefit week when they were not working as a share fisherman, the fishing boat did not put to sea with a view to fishing, for the reason that—

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

(b) the fishing boat was undergoing repairs or maintenance, not being repairs or maintenance to which paragraph (2) relates;

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

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

(4) In this regulation, “benefit week” in relation to a jobseeker’s allowance has the meaning it has in regulation 74 (share fisherman: amount payable).

### **Remunerative work**

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

### **Calculation of earnings**

**73.**—(1) In the calculation of earnings derived from work as a share fisherman for the purposes of establishing entitlement to a jobseeker’s allowance, the provisions of Part 7 apply subject to the following provisions of this regulation.

(2) Regulation 55 (calculation of earnings of self-employed earners) is to be omitted.

(3) For regulation 61 (calculation of net profit of self-employed earners) there is to be substituted the following regulation—

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

**61.**—(1) Earnings derived from work as a share fisherman within the meaning of regulation 67 (interpretation) are to be calculated in accordance with the following provisions of this regulation.

(2) Any such earnings are to 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 are to be the claimant’s share of the net profit derived from the work as a share fisherman less—

(a) an amount in respect of income tax and national insurance contributions under the Benefits Act calculated in accordance with regulation 62 (deduction of tax and contributions for self-employed earners); and

(b) half of any premium paid in respect of a personal pension scheme.

(4) Subject to paragraph (5), there is to be disregarded from a claimant’s share of the weekly net profit—

(a) £20; and

(b) the amount of any earnings specified in paragraphs 4 and 10 of the Schedule to these Regulations, 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 paragraph 5, 6 or 7 of the Schedule—

(a) if the amount so disregarded is £20, paragraph (4)(a) does not apply;

(b) if the amount so disregarded is less than £20, the amount disregarded under paragraph (4)(a) must not exceed the difference between the amount disregarded from those other earnings and £15.

(6) For the purposes of paragraph (3), the net profit is to 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 the employment.

(7) Subject to paragraph (8), no deduction is to 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 is to 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) No reduction is to be made under paragraph (6) in respect of any expenses where the Secretary of State 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) A deduction under paragraph (6)—

- (a) must not be made in respect of any sum unless it has been incurred for the purposes of the business;
- (b) must be made in respect of—
  - (i) the excess of any Value Added Tax paid over Value Added Tax 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 paragraphs (1) to (10), the Secretary of State may calculate earnings or expenditure over a period other than the benefit week if the Secretary of State 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 unusually high or low.

(12) In this regulation “benefit week” has the same meaning as in regulation 74 (share fishermen: amount payable).”.

(4) In regulation 62 (deduction of tax and contributions for self-employed earners)—

- (a) in paragraphs (1) and (3), for the words “regulation 61(1)(b)(i)” there is to be substituted the words “regulation 61(3)(a)”;
- (b) paragraphs (2) and (4) are to be omitted;
- (c) in paragraph (5)(a) for the words “regulation 61(3)(a) or, as the case may be, (4)” there is to be substituted the words “regulation 61(6)”;
- (d) at the end of the regulation there is to be added the following paragraph—

“(6) For the purposes of paragraphs (1) and (3) the earnings to which the basic 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(4), and the upper limit of profits and gains referred to in paragraph (3)(b), are to be apportioned pro rata according to the period over which the earnings are assessed in accordance with regulation 61.”.

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(4) Section 11(4) was amended by paragraph 12 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2) and S.I. 2012/807.

### **Amount payable**

**74.**—(1) The amount payable to a share fisherman by way of a jobseeker's allowance is to be calculated in accordance with regulations 49 to 51 (weekly amounts of jobseeker's allowance, deductions in respect of earnings and payments by way of pensions) and this regulation, and Part 8 does not apply.

(2) Regulations 49 to 51 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 seven days beginning with the date of claim; and
- (b) in respect of any subsequent week, the period of seven days beginning with the day after the last day of the previous benefit week.