

12 DEC 2003

GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2003 - No. 31

The Social Insurance (Classification) (Amendment) Regulations, 2003

Made 12th December, 2003

Laid before the States

Coming into operation 1st January, 2004

THE GUERNSEY SOCIAL SECURITY AUTHORITY, in exercise of the powers conferred upon it by sections 1, 14, 15, 16, 96 and 116 of the Social Insurance (Guernsey) Law, 1978, as amended¹, and of all other powers enabling it in that behalf, hereby orders:-

Amendments

1. In the preamble to the Social Insurance (Classification) (Guernsey) Regulations, 1978, as amended² ("the Principal Regulations") for the words "section one and section sixteen" there is substituted "sections 1, 14, 15, 16 and 96"

2. In regulation 1 of the principal regulations:

(a) immediately before the definition of "the Law" there is inserted

"Guernsey ship" means a ship or vessel registered in Guernsey of which the owner (or managing owner if there is more than one owner) or the manager resides or has his principal place of business in Guernsey;"

(b) immediately after the definition of "the Law" there is inserted:

"manager" means, in relation to any ship or vessel, the ship's husband or other person to whom the management of the ship or vessel is entrusted by or on behalf of the owner; 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 for the time being entitled as charterer to possession and control of the ship or vessel, by virtue of the demise or any sub-demise;"

¹ Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; Nos. V and XII of 1993; Ordinance No. XIV of 1993; Ordres en Conseil No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No XXIV of 2003.

² S.I. 1978 No. 32; S.I. 1979 Nos. 5 and 28; S.I. 1988 No. 27; S.I. 1993 No. 25; S.I. 1994 No. 19; S.I. 1995 No. 30; S.I. 1999 No. 12; S.I. 2000 No. 5; S.I. 2000 No. 24.

““mariner” means a person who is or has been employed under a contract of service either as master or a 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 the ship or vessel or her crew or of any passengers or cargo or mails carried thereby; and
- (b) the contract is entered into in Guernsey with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;”

3. For regulation 2 of the principal regulations there is substituted:

“2. (1) For the purposes of the Law, the classification of insured persons shall be modified in manner following, that is to say:-

- (a) subject to the provisions of paragraph (b) and paragraph (c), every insured person shall, in respect of any employment specified in any paragraph of column (A) of Part I of the First Schedule to these regulations, be treated as an employed person in so far as he is gainfully occupied in such employment and is not a person specified in the corresponding paragraph of column (B) of that Part;
- (b) subject to the provisions of paragraph (c), every insured person shall, in respect of any employment specified in any paragraph of column (A) of Part II of the said First Schedule, be treated as a self-employed person in so far as he is gainfully occupied in such employment and is not a person specified in the corresponding paragraph of column (B) of that Part;
- (c) every insured person shall, in respect of any employment specified in any paragraph of column (A) of Part III of the said First Schedule, be treated as a non-employed person, and any such employment shall be disregarded, in so far as he is not a person specified in the corresponding paragraph of column (B) of that Part.

(2) Notwithstanding anything contained in the Law, where the Authority is satisfied, having regard to any special circumstances, that it would be:

- (a) in the interest of any person to be included in a class of insured persons other than the class of insured persons in which that person would fall to be included but for this regulation; or
- (b) in the interests of the general body of insured persons that any person should be included in a class of insured persons other than the class of insured persons in which that person would fall to be included but for this regulation;

and that it would not lead to inequalities or injustice to the general body of insured persons or of any class of insured persons, the Authority may direct, subject to such conditions as the Authority may deem fit, that such person shall be included in the first-mentioned class of insured persons, and if such direction is given, that person shall be treated for the purposes of the Law as included in that first-mentioned class of insured persons with effect from such date as shall be specified by the Authority in its direction.”

4. Regulation 4 of the principal regulation is replaced by the following

“Special provisions with respect to persons to be included in a particular class of insured persons

4. (1) Subject to the provisions of paragraph (2) of this regulation, where a mariner -

- (a) is employed as a mariner on board any Guernsey ship; or
- (b) is employed as master or a member of the crew of any ship or vessel other than a Guernsey ship and -
 - (i) the contract in respect of the employment is entered into in Guernsey 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 Guernsey; or
- (c) is a radio officer employed on board any ship or vessel, not being a mariner to whom sub-paragraph (a) or (b) of this paragraph applies;

then, notwithstanding that he does not fulfil the conditions of section one of the Law, the mariner shall be insured under the Law and his employment shall be treated as an employed contributor's employment.

(2) Notwithstanding the provisions of the last preceding paragraph, a mariner employed as master or a member of the crew of any ship or vessel, who neither is domiciled nor has a place of residence in Guernsey, shall be excepted from insurance in respect of that employment, but the employer shall, nevertheless, be liable to pay under the Law, in respect of any such mariner employed on board a Guernsey ship, the contributions which he would otherwise have been liable to pay as secondary Class 1 contributions.

(3) Where, under the provisions of the Law relating to references and appeals to the Ordinary Court, the Ordinary Court decides any question as to the class of insured persons in which a person is to be included, and that decision is inconsistent with some previous determination of a question by the Authority, then, if the Authority is satisfied that contributions appropriate to another class have been paid by or in respect of any person by reason of that determination or in the reasonable belief that that determination was applicable, it may, if it appears to it that it would be in the interest of the person by or in respect of whom such contributions have been paid, or of any claimant or beneficiary by virtue of that person's insurance, so to do, direct that that person shall be treated as though he had been included in the class of insured persons corresponding to the contributions paid during any period for which contributions appropriate to that other class were so paid before the date on which the decision of the Ordinary Court was given, and, if such a direction is given, that person shall be deemed to have been included in that class accordingly for any such period.

(4) Where the Authority, on review under subsection (1) of section seventy-six of the Law, has revised a determination of a question previously given by it, the provisions of this regulation shall apply with the necessary modifications in the same manner as they apply where the Ordinary Court has given a decision inconsistent with a determination previously given by the Authority.”

Repeal

5. Paragraph 10 of Part III of the First Schedule to the principal regulations is repealed.

Citation

6. These regulations may be cited as the Social Insurance (Classification) (Amendment) Regulations, 2003.

Commencement

7. These regulations shall come into force on 1st January 2004.

Dated this 12th day of December, 2003.



O D Le Tissier

President of the Guernsey Social Security Authority,
for and on behalf of the Authority.

EXPLANATORY NOTE

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

These regulations add to the existing regulations matters that were formerly contained in regulations that have been repealed as part of a process of consolidation and simplification. They also remove one provision that has become a source of unnecessary complication.

The additional regulations deal with the classification of mariners under Guernsey Law, and provide for the variation of a person's classification in special cases. The repeal removes the exemption from paying employed contributions for students under 18.